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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3455

12 **FERDINAND MENDEZ MOJICA**
13 **1072 Folsom Street, #340**
San Francisco, California 94103

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **58422**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about September 1, 2004, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 58422 to Ferdinand Mendez Mojica (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on August 31, 2010, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

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6 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated.

10 5. Section 490 of the Code provides, in pertinent part, that a board may suspend or
11 revoke a license on the ground that the licensee has been convicted of a crime substantially
12 related to the qualifications, functions, or duties of the business or profession for which the
13 license was issued.

14 6. Section 493 of the Code states:

15 Notwithstanding any other provision of law, in a proceeding conducted by a board
16 within the department pursuant to law to deny an application for a license or to
17 suspend or revoke a license or otherwise take disciplinary action against a person
18 who holds a license, upon the ground that the applicant or the licensee has been
19 convicted of a crime substantially related to the qualifications, functions, and
20 duties of the licensee in question, the record of conviction of the crime shall be
21 conclusive evidence of the fact that the conviction occurred, but only of that fact,
22 and the board may inquire into the circumstances surrounding the commission of
23 the crime in order to fix the degree of discipline or to determine if the conviction is
24 substantially related to the qualifications, functions, and duties of the licensee in
25 question.

26 As used in this section, "license" includes "certificate," "permit," "authority," and
27 "registration."

28 7. Section 4300, subdivision (a), of the Code states that every license issued may be
suspended or revoked.

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8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

1 **COST RECOVERY**

2 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct: Commission of Acts Involving Moral Turpitude, Dishonesty, or Fraud)

8 11. Respondent has subjected his license to disciplinary action under Code section 4301,
9 subdivision (f), in that Respondent has committed acts involving moral turpitude, dishonesty,
10 fraud, deceit, or corruption. The circumstances are as follows:

11 a. On or about January 7, 2008, in the Superior Court of California, County of
12 San Mateo, in the case entitled, *People of the State of California v. Ferdinand Mendez Mojica*,
13 Case No. NM370870, Respondent was convicted on his plea of nolo contendere of violating
14 Penal Code section 487, subdivision (a), (Grand Theft), a misdemeanor. Respondent was
15 sentenced to serve 5 days in county jail and 18 months of informal probation and to comply with
16 other terms and conditions.

17 b. The underlying circumstances of the crime are that on September 30, 2007, during the
18 course and scope of his employment as a Pharmacy Technician at Target Store #1407,
19 Respondent charged the purchase of two \$500.00 Target gift cards to a customer's credit card that
20 was without the owner's/customer's permission.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct: Conviction of Substantially Related Crime)

23 12. Respondent has subjected his license to disciplinary action under Code section 4301,
24 subdivision (l), in that Respondent has been convicted of a crime substantially related to the
25 qualifications, functions or duties of a pharmacy technician, within the meaning of Title 16 of the
26 California Code of Regulations, section 1770, as described more fully in Paragraph 11, above.

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PRAYER

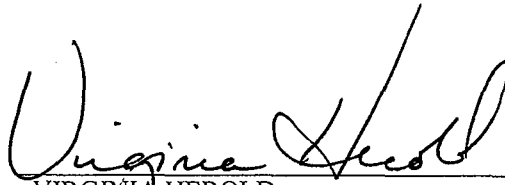
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 58422, issued to Ferdinand Mendez Mojica.

2. Ordering Ferdinand Mendez Mojica to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/10



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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