

1 BILL LOCKYER, Attorney General
of the State of California
2 FRANK H. PACOE, State Bar No. 91740
Supervising Deputy Attorney General

3
4 Attorneys for Complainant

5 LYDIA ZANE, Senior Legal Analyst
California Department of Justice
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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 MELISSA SUE PETERSON
4769 Eastus Drive
14 San Jose, CA 95129

15 Pharmacy Technician
License No. TCH 41017

16 Respondent.

Case No. 2749

OAH No. 2004120189

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Bill Lockyer, Attorney General of the State of California, by Lydia Zane, Senior Legal
24 Analyst.

25 2. Melissa Sue Peterson (Respondent) is represented in this proceeding by
26 attorney Geoffrey W. Rawlings, whose address is Law Offices of GEOFFREY W. RAWLINGS,
27 586 North First Street, Suite 101, San Jose, California 95112.
28

3. On or about July 31, 2002, the Board of Pharmacy issued Pharmacy Technician's License No. TCH 41017 to Melissa Sue Peterson (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2749 and will expire on June 30, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2749 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 4, 2004. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2749 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2749. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2749, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician License No. TCH 41017 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician License without further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 41017,

1 issued to Respondent Melissa Sue Peterson is surrendered and accepted by the Board of
2 Pharmacy.

3 1. The surrender of Respondent's Pharmacy Technician License and the
4 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
5 against Respondent. This stipulation constitutes a record of the discipline and shall become a
6 part of Respondent's license history with the Board.

7 2. Respondent shall lose all rights and privileges as a Pharmacy Technician
8 in California as of the effective date of the Board's Decision and Order.

9 3. Respondent shall cause to be delivered to the Board both her License,
10 wall and pocket license certificate on or before the effective date of the Decision and Order.

11 4. Respondent may not reapply for any Technician registration of the Board
12 for three (3) years from the effective date of the Decision and Order.

13 5. Respondent fully understands and agrees that if she ever files an
14 application for licensure or a petition for reinstatement in the State of California, the Board shall
15 treat it as a new application for licensure. Respondent must comply with all the laws, regulations
16 and procedures for licensure as a Pharmacy Technician in effect on the date that the application
17 is filed, and all of the charges and allegations contained in Accusation No. 2749 shall be deemed
18 to be true, correct and admitted by Respondent when the Board determines whether to grant or
19 deny the application.

20 6. Respondent shall pay the Board its costs of investigation and enforcement
21 in the amount of \$5,828.00 prior to issuance of a new or reinstated license.

22
23 ACCEPTANCE

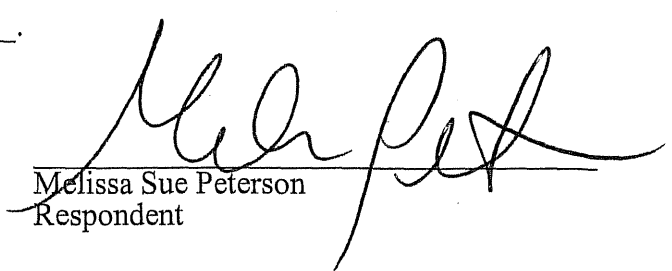
24 I have carefully read the above Stipulated Surrender of License and Order and
25 have fully discussed it with my attorney, Geoffrey W. Rawlings. I understand the stipulation and
26 the effect it will have on my Pharmacy Technician's License. I enter into this Stipulated

27 //

28 //

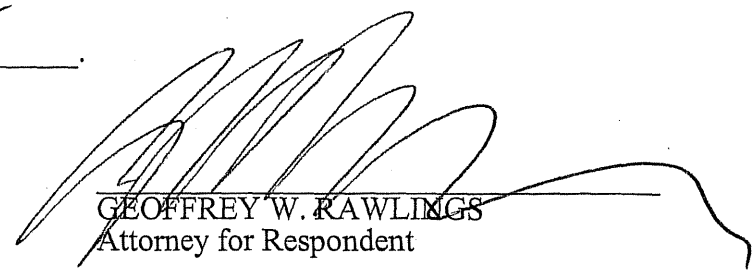
1 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
2 by the Decision and Order of the Board of Pharmacy.

3 DATED: 2-7-05.

4
5
6 
Melissa Sue Peterson
Respondent

7
8 I concur with this stipulated surrender.

9 DATED: 2.7.5.


10
11 
12 GEOFFREY W. RAWLINGS
Attorney for Respondent

13
14 ENDORSEMENT

15 The foregoing Stipulated Surrender of License and Order is hereby respectfully
16 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

17 DATED: 2/7/05.

18 BILL LOCKYER, Attorney General
19 of the State of California

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21 
For FRANK H. PACOE
Supervising Deputy Attorney General

22 Attorneys for Complainant

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24 LYDIA ZANE
Senior Legal Analyst

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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2749

MELISSA SUE PETERSON

OAH No. 2004120189

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 20, 2005.

It is so ORDERED March 21, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2749

1 BILL LOCKYER, Attorney General
of the State of California
2 FRANK H. PACOE, State Bar No.91740
Supervising Deputy Attorney General

3 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2749

13 MELISSA SUE PETERSON
14 4769 Eastus Dr
San Jose, CA 95129

OAH No.

15 Pharmacy Technician
16 License No. TCH 41017

A C C U S A T I O N

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs.

24 2. On or about July 31, 2002, the Board of Pharmacy issued Pharmacy
25 Technician License No. TCH 41017 to Melissa Sue Peterson (Respondent). The Pharmacy
26 Technician License was in full force and effect at all times relevant to the charges brought herein
27 and will expire on June 30, 2006, unless renewed.
28

JURISDICTION

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

4. Section 490 of the Code states in pertinent part that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of the section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

5. Section 4301 of the Code states in parts relevant herein:

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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
2 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
3 meaning of this provision. The board may take action when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under Section
6 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
7 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,

8 6. Section 4324(a) of the Code states that every person who signs the name of
9 another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or
10 attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon
11 conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in
12 the county jail for not more than one year. information, or indictment.

13 7. Section 4059 of the Code states:

14 (a) A person may not furnish any dangerous drug, except upon the prescription of
15 a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any
16 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or
17 veterinarian.

18 8. Health and Safety Code section 11171 states that no person shall prescribe,
19 administer, or furnish a controlled substance except under the conditions and in the manner
20 provided by this division.

21 9. Health and Safety Code section 11164(c) states that except as provided in
22 Section 11167, no person shall prescribe a controlled substance, nor shall any person fill,
23 compound, or dispense such a prescription unless it complies with the requirements of this
24 section. Any controlled substance classified in Schedule III, IV, V may be dispensed upon an
25 oral prescription or electronically transmitted prescription, which shall be produced in hard copy
26 form and signed and dated by the pharmacist filling the prescription or by any other person
27 expressly authorized by provisions of the Health and Safety Code.

28 10. Section 118, subdivision (b), of the Code provides that the

1 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
2 jurisdiction to proceed with a disciplinary action during the period within which the license may
3 be renewed, restored, reissued or reinstated.

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

8 12. DRUGS

9 "Darvocet-N 100", also referred to as **Propoxyphene napsylate**, is a Schedule IV
10 controlled substance pursuant to Health and Safety Code section 11057(c)(2) and a dangerous
11 drug pursuant to Business and Professions Code section 4022. Darvocet-N 100 is a mild
12 narcotic analgesic structurally related to methadone.

13 "Soma", also known as **Carisoprodol**, is a dangerous drug pursuant to Business
14 and Professions Code section 4022. Soma is a skeletal muscle relaxant

15 "Vicodin", also known as **Hydrocodone**, is a Schedule III controlled substance
16 pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to
17 Business and Professions Code section 4022. Vicodin is a semisynthetic narcotic analgesic and
18 antitussive with multiple actions qualitatively similar to codeine.

19 FIRST CAUSE FOR DISCIPLINE

20 (Conviction)

21 13. Respondent is subject to disciplinary action under section 490 and section
22 4301(l) of the Code in that on or about September 24, 2003, in the case known as *People of the*
23 *State of California v. Melissa Sue Peterson*, Santa Clara County Superior Court Case No.
24 CC313842, respondent was convicted on her plea of guilty to two felony counts of violating
25 Health and Safety Code section 11368 for forging, altering, issuing, or uttering forged or altered
26 prescriptions. The circumstances are as follows:

27 a. On or about December 3, 2002, respondent forged and altered a
28 prescription, and did issue and utter an altered prescription and a prescription bearing a forged

1 and fictitious signature for a narcotic drug, hydrocodone.

2 b. On or about December 17, 2002, respondent forged and altered a
3 prescription , and did issue and utter an altered prescription and a prescription bearing a forged
4 and fictitious signature for a narcotic drug, hydrocodone.

5 SECOND CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct)

7 14. Respondent is subject to disciplinary action under section 4301(g) of the
8 Code in that respondent knowingly made or signed document that falsely represented a state of
9 facts. The circumstances are as follows:

10 a. During the time period beginning on or about January 24, 2001, through to
11 approximately January 28, 2003, while employed as a pharmacy technician at Longs Drugs Store
12 #257, located at 5170 Moorpark Avenue, in San Jose, respondent knowingly made 65 false new
13 and refill prescriptions for dangerous drugs and controlled substances as set forth below.

14 (1.) Respondent created 30 unauthorized new and refill prescriptions totaling
15 1,068 tablets of Vicodin dispensed to patient Craig C.¹ as follows:

RX #	Date	Drug/(# of Tablets)	Physician
714930	2/20/2001	Vicodin (24)	Rutner
744638	12/20/2001	Vicodin (36)	Rutner
744638	12/28/2001	Vicodin (36)	Rutner
744638	1/11/2002	Vicodin (36)	Rutner
744638	1/25/2002	Vicodin (36)	Rutner
750229	2/15/2002	Vicodin (36)	Rutner
750229	2/28/2002	Vicodin (36)	Rutner
750229	3/14/2002	Vicodin (36)	Rutner
750229	3/19/2002	Vicodin (36)	Rutner
750229	3/25/2002	Vicodin (36)	Rutner
755644	4/1/2002	Vicodin (36)	Rutner

27
28 1. The full names of prescription recipients will be made available in discovery.

	RX #	Date	Drug/(# of Tablets)	Physician
1				
2	755644	4/7/2002	Vicodin (36)	Rutner
3	755644	4/17/2002	Vicodin (36)	Rutner
4	755644	4/26/2002	Vicodin (36)	Rutner
5	759441	5/9/2002	Vicodin (36)	Rutner
6	759441	5/14/2002	Vicodin (36)	Rutner
7	760979	6/4/2002	Vicodin (36)	Rutner
8	760979	7/22/2002	Vicodin (36)	Rutner
9	760979	8/3/2002	Vicodin (36)	Rutner
10	760979	8/9/2002	Vicodin (36)	Rutner
11	760979	8/28/2002	Vicodin (36)	Rutner
12	770750	9/17/2002	Vicodin (36)	Rutner
13	770750	10/2/2002	Vicodin (36)	Rutner
14	770750	10/11/2002	Vicodin (36)	Rutner
15	770750	10/17/2002	Vicodin (36)	Rutner
16	770750	10/27/2002	Vicodin (36)	Rutner
17	777181	12/3/2002	Vicodin (36)	Rutner
18	777181	12/17/2002	Vicodin (36)	Rutner
19	777181	1/14/2003	Vicodin (36)	Rutner
20	777181	1/28/2002	Vicodin (36)	Rutner

(2.) Respondent created 5 unauthorized new and refill prescriptions totaling 130 tablets of Soma dispensed to patient Christine C. as follows:

	RX #	Date	Drug/(# of Tablets)	Physician
21				
22	745515	1/25/2002	Soma (30)	Lee
23	745515	4/8/2002	Soma (20)	Lee
24	745515	6/4/2002	Soma (30)	Lee
25	745515	6/12/2002	Soma (20)	Lee
26	745515	8/9/2002	Soma (30)	Lee
27				
28				

(3.) Respondent created 12 unauthorized prescriptions totaling 252 tablets of Vicodin dispensed to patient Christine C. as follows:

RX #	Date	Drug/(# of Tablets)	Physician
751354	4/19/2002	Vicodin (20)	Wong
751354	5/6/2002	Vicodin (20)	Wong
763163	6/17/2002	Vicodin (20)	Wong
763163	7/3/2002	Vicodin (20)	Wong
763163	7/11/2002	Vicodin (20)	Wong
763163	8/14/2002	Vicodin (20)	Wong
769195	8/28/2002	Vicodin (20)	Wong
769195	9/16/2002	Vicodin (20)	Wong
769195	11/11/2002	Vicodin (20)	Wong
776608	12/3/2002	Vicodin (24)	Reiss PA
776608	12/17/2003	Vicodin (24)	Reiss PA
776608	1/28/2003	Vicodin (24)	Reiss PA

(4.) Respondent created 18 unauthorized prescriptions totaling 720 tablets of Darvocet-N 100 dispensed to patient Christine C. as follows:

RX #	Date	Drug/(# of Tablets)	Physician
711933	4/16/2001	Darvocet-N 100 (40)	Wong
724445	5/14/2001	Darvocet-N 100 (40)	Wong
724445	5/20/2001	Darvocet-N 100 (40)	Wong
724445	6/1/2001	Darvocet -N 100 (40)	Wong
724445	6/8/2001	Darvocet-N 100 (40)	Wong
729524	7/4/2001	Darvocet-N 100 (40)	Wong
729524	7/11/2001	Darvocet-N 100 (40)	Wong
729524	8/10/2001	Darvocet-N 100 (40)	Wong
729524	8/27/2001	Darvocet-N 100 (40)	Wong
735621	9/8/2001	Darvocet-N 100 (40)	Wong
735621	9/18/2001	Darvocet-N 100 (40)	Wong
735621	9/25/2001	Darvocet-N 100 (40)	Wong

RX #	Date	Drug (# of Tablets)	Physician
739153	10/16/2001	Darvocet-N 100 (40)	Wong
739153	11/2/2001	Darvocet-N 100 (40)	Wong
739153	11/16/2001	Darvocet-N 100 (40)	Wong
739153	11/21/2001	Darvocet-N 100 (40)	Wong
739153	12/7/2001	Darvocet-N 100 (40)	Wong
748779	1/25/2002	Darvocet-N 100 (40)	Wong

15. On or about June 24, 2003, respondent admitted to an investigator for Long's Asset Protection and to the Board's investigators that during the time she worked as a pharmacy technician at Long's Drug Store #257, she input unauthorized refills of prescriptions on the pharmacy's computer to dispense Vicodin and other pain medications to Craig C. and Christine C.. Respondent also admitted that she used the initials of other pharmacy staff to make the unauthorized prescriptions go through the Pharmacy's computer system.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Fraudulent Acts)

16. Respondent is subject to disciplinary action under section 4301(f) of the Code in that respondent committed fraudulent acts by creating unauthorized prescription refills while employed as a pharmacy technician at Long's Drug Store #257 as set forth in paragraphs 13, 14 and 15, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - False Representation)

17. Respondent is subject to disciplinary action under section 490 of the Code for the violation of Code section 4301(g) in that respondent knowingly made false representations of the existence of a state of facts in order to fill unauthorized prescriptions for Craig C. and Christine C. as set forth in paragraphs 13, 14 and 15, above.

FIFTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without Prescription)

18. Respondent is subject to disciplinary action under section 4301(f) of the

1 Code for the violation of Code section 4059(a) in that respondent furnished dangerous drugs to
2 Craig C. and Christine C. by creating unauthorized prescription refills for Vicodin, Darvocet-N
3 100 and Soma as set forth in paragraphs 13, 14 and 15, above.

4 SIXTH CAUSE FOR DISCIPLINE

5 (Furnishing Controlled Substances Without Prescription)

6 19. Respondent is subject to disciplinary action under section 4301(f) of the
7 Code for the violation of Health and Safety Code sections 11171 and 11164(c) in that
8 respondent furnished controlled substances to Craig C. and Christine C. by creating
9 unauthorized prescription refills for Vicodin and Darvocet-N 100 as set forth in paragraphs 13,
10 14 and 15, above.

11 PRAYER


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

14 A. Revoking or suspending Pharmacy Technician License No. TCH 41017,
15 issued to respondent Melissa Sue Peterson.

16 B. Ordering respondent Melissa Sue Peterson to pay the Board of Pharmacy
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

19 C. Taking such other and further action as deemed necessary and proper.

20 DATED: 11/1/04

21
22 
23 PATRICIA F. HARRIS
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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LLZ 9/01/2004
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