

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

In the Matter of the Accusation Against:

Case No. 3108

**BIG A. DRUGSTORES, INC.,
DBA DRUG EMPORIUM NO. 807**
9922 Katella Avenue
Garden Grove, CA 92804

Pharmacy Permit No. PHY 45373

**EDWARD JOSEPH DALLAL,
AKA EDWARD J. DALLAL**
15569 2720 Casiano Road
Los Angeles, CA 90077

Pharmacist License No. RPH 25391

Respondent.

DECISION AND ORDER

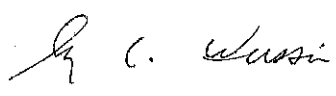
The attached Stipulated Settlement and Disciplinary and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 14, 2012.

It is so ORDERED on August 15, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3108

12 **BIG A. DRUGSTORES, INC.,**
13 **DBA DRUG EMPORIUM NO. 807**
14 9922 Katella Avenue
Garden Grove, CA 92804

OAH No. 2009090911

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Pharmacy Permit No. PHY 45373

16
17 **EDWARD JOSEPH DALLAL, R.P.H.,**
AKA EDWARD J. DALLAL
18 15569 Aqua Verde Drive
Los Angeles, CA 90077

19 Pharmacist License No. RPH 25391

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 PARTIES

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought this action solely in her official capacity and is represented in this matter by
27 Kamala D. Harris, Attorney General of the State of California, by Antoinette B. Cincotta, Deputy
28 Attorney General.

2. Big A. Drugstores, Inc., doing business as Drug Emporium No. 807, and Edward Joseph Dallal, R.P.H., aka Edward J. Dallal are represented in this proceeding by attorneys Donald Brown and Adam Brown, whose address is Law Offices of Brown & Brown, Torrance Executive Plaza, 3848 Carson Street, Suite 206, Torrance, CA 90503.

3. On or about August 8, 2001, the Board issued Pharmacy Permit Number PHY 45373 to Big A. Drugstores, Inc., also known as Big "A" Drugstores, Inc., to do business as Drug Emporium No. 807, a.k.a. Store Number 807, a.k.a. Store #807, a.k.a. Drug Emporium #807, with an address of record at 9922 Katella Avenue, Garden Grove, California 92804 (Respondent Big A. Drugstores, Inc.). Edward Joseph Dallal has been the President and Treasurer of Respondent Big A. Drugstores, Inc. since August 8, 2001. The Pharmacy Permit expired on August 1, 2008.

4. On or about February 28, 1968, the Board issued Pharmacist License No. RPH 25391 to Edward Joseph Dallal, also known as Edward J. Dallal (Respondent Dallal). At all times material herein, Respondent Dallal was and currently is licensed by the Board as a registered pharmacist. The license will expire on October 31, 2013, unless renewed.

JURISDICTION

5. Second Amended Accusation No. 3108 was filed before the Board, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on March 15, 2011. Respondents timely filed their Notice of Defense contesting the Accusation.

6. A copy of Second Amended Accusation No. 3108 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent Dallal, on his own behalf individually and as the duly authorized representative for Respondent Big A. Drugstore, Inc. has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 3108. Respondent Dallal, on his own behalf individually and as the duly authorized representative for Respondent Big A. Drugstore, Inc, has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

1 8. Respondent Dallal, on behalf of himself individually and as the duly authorized
2 representative for Respondent Big A. Drugstore, Inc., is fully aware of his legal rights in this
3 matter, including the right to a hearing on the charges and allegations in the Accusation; the right
4 to confront and cross-examine the witnesses; the right to present evidence and to testify on
5 Respondents behalf; the right to the issuance of subpoenas to compel the attendance of witnesses
6 and the production of documents; the right to reconsideration and court review of an adverse
7 decision; and all other rights accorded by the California Administrative Procedure Act and other
8 applicable laws.

9 9. Respondent Dallal, on behalf of himself individually and as the duly authorized
10 representative for Respondent Big A. Drugstore, Inc., voluntarily, knowingly, and intelligently
11 waives and gives up each and every right set forth above.

12 CULPABILITY

13 10. Respondents admit the truth of each and every charge and allegation in Accusation
14 No. 3108, agree that cause exists for discipline.

15 11. Respondent Big A. Drugstores, Inc. hereby stipulates to the revocation of Pharmacy
16 Permit No. PHY 45373. Respondents understand that by signing this stipulation they enable the
17 Board to issue an order revoking the Pharmacy Permit without further process.

18 12. Respondent Dallal agrees that his Pharmacist License is also subject to discipline, and
19 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
20 below.

21 RESERVATION

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

26 CONTINGENCY

27 14. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
28 Dallal, on behalf of himself individually and as the duly authorized representative for Respondent

1 Big A. Drugstore, Inc., understands and agrees that counsel for Complainant and the staff of the
2 Board of Pharmacy may communicate directly with the Board regarding this stipulation and
3 settlement, without notice to or participation by Respondents. By signing the stipulation,
4 Respondent Dallal, on behalf of himself individually and as the duly authorized representative for
5 Respondent Big A. Drugstore, Inc., understands and agrees that Respondents may not withdraw
6 their agreement or seek to rescind the stipulation prior to the time the Board considers and acts
7 upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
8 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
9 be inadmissible in any legal action between the parties, and the Board shall not be disqualified
10 from further action by having considered this matter.

11 15. The parties understand and agree that facsimile copies of this Stipulated Settlement
12 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
13 effect as the originals.

14 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
18 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
19 writing executed by an authorized representative of each of the parties.

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 45373 issued to Respondent
3 Big A Drugstores, Inc., doing business as Drug Emporium No. 807 is revoked.

4 IT IS HEREBY FURTHER ORDERED that Pharmacist License No. RPH 25391 issued to
5 Respondent Edward J. Dallal is revoked. However, the revocation of Pharmacist License No.
6 RPH 25391 issued to Respondent Dallal is stayed, and he is placed on probation for five (5) years
7 on the following terms and conditions:

8 **1. Pharmacist Examination – Suspension from Practice**

9 Respondent shall be automatically suspended from practice as a pharmacist upon the
10 effective date of this decision. Respondent shall take and pass both the California Pharmacist
11 Jurisprudence Examination (CPJE) and the North American Pharmacist Licensure Examination
12 (NAPLEX). Respondent shall not resume practice as a pharmacist until he takes and passes the
13 CPJE and NAPLEX, and is notified in writing that he has passed both examinations and may
14 resume practice. Respondent shall not resume practice until notified by the Board in writing that
15 he may do so. Respondent shall bear all costs of the examinations required by the Board. Failure
16 to take and pass the examinations within two (2) years of the effective date of this decision shall
17 be considered a violation of probation.

18 During suspension, Respondent shall not enter any pharmacy area or any portion of the
19 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
20 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
21 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
22 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
23 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
24 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
25 and controlled substances. During suspension, respondent shall not engage in any activity that
26 requires the professional judgment of a pharmacist. Respondent shall not direct or control any
27 aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy

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1 technician or a designated representative for any entity licensed by the Board. Failure to comply
2 with this suspension shall be considered a violation of probation.

3 If Respondent fails to take and pass the CPJE and/or NAPLEX after four attempts,
4 Respondent shall successfully complete, at a minimum, sixteen (16) additional semester units of
5 pharmacy education as approved by the Board. Failure to complete coursework as required shall
6 be considered a violation of probation.

7 **2. Obey All Laws**

8 Respondent Dallah shall obey all state and federal laws and regulations.

9 Respondent shall report any of the following occurrences to the Board, in writing, within
10 seventy-two (72) hours of such occurrence:

- 11 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
12 criminal complaint, information or indictment;
- 13 • an arrest or issuance of a criminal complaint for violation of any provision of the
14 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
15 substances laws;
- 16 • a conviction of any crime;
- 17 • discipline, citation, or other administrative action filed by any state or federal agency
18 which involves Respondent's Pharmacist License or which is related to the practice of
19 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
20 for any drug, device or controlled substance.

21 Failure to timely report such occurrence shall be considered a violation of probation.

22 **3. Report to the Board**

23 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
24 designee. The report shall be made either in person or in writing, as directed. Among other
25 requirements, Respondent shall state in each report under penalty of perjury whether there has
26 been compliance with all the terms and conditions of probation. Failure to submit timely reports
27 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
28 in submission of reports as directed may be added to the total period of probation. Moreover, if

1 the final probation report is not made as directed, probation shall be automatically extended until
2 such time as the final report is made and accepted by the Board.

3 **4. Interview with the Board**

4 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
5 with the Board or its designee, at such intervals and locations as are determined by the Board or
6 its designee. Failure to appear for any scheduled interview without prior notification to Board
7 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
8 during the period of probation, shall be considered a violation of probation.

9 **5. Cooperate with Board Staff**

10 Respondent shall cooperate with the Board's inspection program and with the Board's
11 monitoring and investigation of his compliance with the terms and conditions of probation.
12 Failure to cooperate shall be considered a violation of probation.

13 **6. Continuing Education**

14 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
15 pharmacist as directed by the Board or its designee.

16 **7. Notice to Employers**

17 During the period of probation, Respondent shall notify all present and prospective
18 employers of the decision in Case Number 3108 and the terms, conditions and restrictions
19 imposed on him by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
21 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
22 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
23 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
24 individual(s) has/have read the decision in case number 3108, and terms and conditions imposed
25 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
26 supervisor(s) submit timely acknowledgment(s) to the Board.

27 If Respondent works for or is employed by or through a pharmacy employment service,
28 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity

1 licensed by the Board of the terms and conditions of the decision in Case Number 3108 in
2 advance of the Respondent commencing work at each licensed entity. A record of this
3 notification must be provided to the Board upon request.

4 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
5 (15) days of Respondent undertaking any new employment by or through a pharmacy
6 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
7 service to report to the Board in writing acknowledging that they has read the decision in case
8 number 3108 and the terms and conditions imposed thereby. It shall be Respondent's
9 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
10 acknowledgment(s) to the Board. Failure to timely notify present or prospective employer(s) or
11 to cause that/those employer(s) to submit timely acknowledgments to the Board shall be
12 considered a violation of probation.

13 "Employment" within the meaning of this provision shall include any full-time, part-
14 time, temporary, relief or pharmacy management service as a pharmacist or any position for
15 which a pharmacist license is a requirement or criterion for employment, whether
16 Respondent is an employee, independent contractor or volunteer.

17 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
18 **Designated Representative-in-Charge, or Serving as a Consultant**

19 During the period of probation, Respondent shall not supervise any intern pharmacist, be
20 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
21 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
22 unauthorized supervision responsibilities shall be considered a violation of probation.

23 **9. Probation Monitoring Costs**

24 Respondent shall pay any costs associated with probation monitoring as determined by the
25 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
26 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
27 shall be considered a violation of probation.

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1 **10. Status of License**

2 Respondent shall, at all times while on probation, maintain an active, current pharmacist
3 license with the Board, including any period during which probation is tolled. Failure to maintain
4 an active, current pharmacist license shall be considered a violation of probation.

5 If Respondent's pharmacist license expires or is cancelled by operation of law or otherwise
6 at any time during the period of probation, including any extensions thereof due to tolling or
7 otherwise, upon renewal or reapplication Respondent's pharmacist license shall be subject to all
8 terms and conditions of this probation not previously satisfied.

9 **11. License Surrender While on Probation/Suspension**

10 Following the effective date of this decision, should Respondent cease practice due to
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, he
12 may tender his license to the Board for surrender. The Board or its designee shall have the
13 discretion whether to grant the request for surrender or take any other action it deems appropriate
14 and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no
15 longer be subject to the terms and conditions of probation. This surrender constitutes a record of
16 discipline and shall become a part of the Respondent's license history with the Board.

17 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
18 to the Board within ten (10) days of notification by the Board that the surrender is accepted.
19 Respondent may not reapply for any license from the Board for three (3) years from the effective
20 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
21 of the date the application for that license is submitted to the Board, including any outstanding
22 costs.

23 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
24 **Employment**

25 Respondent shall notify the Board in writing within ten (10) days of any change of
26 employment. Said notification shall include the reasons for leaving, the address of the new
27 employer, the name of the supervisor and owner, and the work schedule if known. Respondent

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1 shall further notify the Board in writing within ten (10) days of a change in name, residence
2 address, mailing address, or phone number.

3 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
4 phone number(s) shall be considered a violation of probation.

5 **13. Employment**

6 Respondent is required to practice as a pharmacist in a California licensed pharmacy setting
7 that dispenses medication for a minimum of 1600 hours for one year prior to the completion of
8 probation. Respondent shall notify the Board of the start and end dates for each place of
9 employment as a pharmacist until probation is completed. After the first year of probation, the
10 Board or its designee may consider a modification of this requirement. If Respondent fails to
11 comply with this requirement or a subsequent modification thereto, such failure shall be
12 considered a violation of probation.

13 **14. Violation of Probation**

14 If Respondent has not complied with any term or condition of probation, the Board shall
15 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
16 until all terms and conditions have been satisfied or the Board has taken other action as deemed
17 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
18 to impose the penalty that was stayed.

19 If Respondent violates probation in any respect, the Board, after giving him notice and an
20 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
21 stayed. If a petition to revoke probation or an accusation is filed against Respondent during
22 probation, the Board shall have continuing jurisdiction and the period of probation shall be
23 automatically extended until the petition to revoke probation or accusation is heard and decided.

24 **15. Completion of Probation**

25 Upon written notice by the Board or its designee indicating successful completion of
26 probation, Respondent's license will be fully restored.

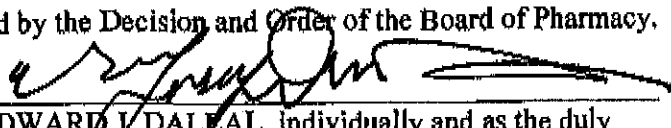
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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorneys, Donald B. Brown and Adam B. Brown. I understand the
4 stipulation and the effect it will have on the Pharmacy Permit issued to Respondent Big A
5 Drugstores, Inc., doing business as Drug Emporium No. 807, and my Pharmacist License. I enter
6 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
7 and on behalf of myself individually and as the duly authorized representative for Respondent Big
8 A. Drugstores, Inc., and agree to be bound by the Decision and Order of the Board of Pharmacy.

9 DATED: JUN - 4 2012


EDWARD J. DALEAL, individually and as the duly
authorized representative on behalf of
BIG A. DRUGSTORES, INC.,
DBA DRUG EMPORIUM NO. 807
Respondents

13
14 I have read and fully discussed with Respondent, individually and as the duly authorized
15 representative on behalf of Respondent Big A. Drugstores, Inc., doing business as Drug
16 Emporium No. 807, the terms and conditions and other matters contained in the above Stipulated
17 Settlement and Disciplinary Order. I approve its form and content.

18 DATED: JUN - 4 2012


Adam B. Brown, Esq.
Attorney for Respondents

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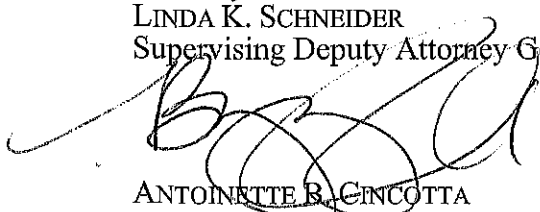
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 3108

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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15 Pharmacy Permit No. PHY 45373

16 **EDWARD JOSEPH DALLAL, R.P.H.,**
17 **AKA EDWARD J. DALLAL**
15569 Aqua Verde Drive
18 Los Angeles, CA 90077

19 Pharmacist License No. RPH 25391

20 Respondents.

Case No. 3108

OAH No. 2009090911

SECOND AMENDED ACCUSATION

21
22 Complainant alleges:

23 **PARTIES**

24 1. Virginia Herold (Complainant) brings this Second Amended Accusation solely in her
25 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
26 Affairs ("Board").

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1 2. On or about August 8, 2001, the Board issued Pharmacy Permit Number PHY
2 45373 to **Big A. Drugstores, Inc.**, also known as Big "A" Drugstores, Inc., to do business as
3 Drug Emporium No. 807, a.k.a. Store Number 807, a.k.a. Store #807, a.k.a. Drug Emporium
4 #807, with an address of record at 9922 Katella Avenue, Garden Grove, California 92804
5 ("Respondent **Drug Emporium No. 807**"). Edward Joseph Dallal has been the President and
6 Treasurer of Respondent Drug Emporium No. 807 since August 8, 2001. The Pharmacy Permit
7 expired on August 1, 2008.

8 3. On or about October 24, 1978, the Board issued Pharmacy Permit Number PHY
9 20454 to Edward Joseph Dallal to do business as Big A Drug Store, with an address of record at
10 12030 S. Garfield Avenue, South Gate, California. Edward Joseph Dallal was Pharmacist-in-
11 Charge from September 8, 1984 to September 1, 1989. Gregory Dallal, RPH 42469, was the
12 Pharmacist-in-Charge from September 1, 1989 to October 5, 1993. The Pharmacy Permit was
13 canceled on October 5, 1993 due to a change of location. On September 28, 1993, the Board
14 issued Original Permit Number PHY 39554 to Edward Joseph Dallal to do business as Big A
15 Drug Store, and the address of record was 12030 South Garfield Avenue, South Gate, CA 90280.
16 Gregory Dallal, RPH 42469 was the Pharmacist-in-Charge from September 28, 1993 to July 2,
17 1998. The Pharmacy Permit was canceled on July 2, 1998. On May 27, 1998, the Board issued
18 Original Permit Number PHY 43388 to **Big A Drugstores, Inc.** to do business as Big A
19 Drugstore, with an address of record at 12030 S. Garfield Avenue, South Gate, California ("**Big A**
20 **Drugstores-South Gate**."). Edward J. Dallal was the President and Treasurer from May 27, 1998
21 to November 21, 2007. Gregory Dallal, RPH 42469 was the Pharmacist-in-Charge from
22 September 28, 1993 to July 2, 1998. Edward J. Dallal, RPH 25391 was the Pharmacist-in-Charge
23 from December 5, 1998 to December 18, 2000. John R. Wilson, RPH 35344 was the Pharmacist-
24 in-Charge from December 18, 2000 to December 2007. The Pharmacy Permit was canceled on
25 November 21, 2001.

26 4. On or about February 28, 1968, the Board issued Pharmacy License No. RPH
27 25391 to **Edward Joseph Dallal**, also known as Edward J. Dallal, ("**Respondent Dallal**"). At all
28

1 times material herein, Respondent Dallal was and currently is licensed by the Board as a
2 registered pharmacist. The license will expire on October 31, 2011, unless renewed.

3 **UNLICENSED ENTITIES**

4 5. **Big A Distribution**, located at 12029 NE Sumner St., Portland, Oregon was issued
5 wholesale license W1-0002310 by the Oregon Board of Pharmacy on February 5, 2002. That
6 license was surrendered on October 2, 2006, when it became apparent there would be disciplinary
7 action against that license by the Oregon Board of Pharmacy. Big A Distribution is not licensed
8 by the Board, and was not licensed by the Board at any time relevant herein.

9 6. **DIT Healthcare Distribution, Inc.**, located at 4884 Duff Drive, Cincinnati, Ohio
10 45246 is not licensed by the Board and was not licensed by the Board at any time relevant herein.

11 7. **E-Tail Network, Inc.**, with David Miller as Chief Executive Officer, located at
12 1450 No. Tustin Avenue, Ste. 202, Santa Ana, CA 92705, is not licensed by the Board and was
13 not licensed by the Board at any time relevant herein.

14 8. **Minnesota Independent Cooperative**, also known as "MIC," located at 2535
15 Pilot Knob Road, Ste. 120, Mendota Heights, Minnesota was issued Wholesaler License No.
16 361687 by the Minnesota Board of Pharmacy on February 8, 2006. Minnesota Independent
17 Cooperative is owned and operated by David Miller. Minnesota Independent Cooperative is not
18 licensed by the Board, and was not licensed by the Board at any time relevant herein.

19 9. **Wholesale Drug Corporation**, also known as "WDC," a Nevada corporation,
20 located at 12029 NE Sumner St., Portland, Oregon registered the business name "Big A
21 Distribution" on or about December 14, 2004, with the Oregon Secretary of State. The
22 registration was canceled on February 16, 2006. The corporate president and secretary of
23 Wholesale Drug Corporation is David J. Miller, 2 Park Plaza, Ste. 100, Irvine, CA 92614.
24 Wholesale Drug Corporation is not licensed by the Board and was not licensed by the Board at
25 any time relevant herein.

26 **JURISDICTION**

27 10. Complainant brings this Accusation under the power vested in the Board under
28 Business and Professions Code section 4300(a) to suspend or revoke licenses issued by the Board

1 pursuant to the California Pharmacy Act, Chapter 9, Division 2, section 4000 et seq. of the
2 Business and Professions Code. All section references are to the Business and Professions Code
3 unless otherwise indicated.

4 11. Section 118 provides in relevant part:

5 “....

6 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
7 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
8 order of a court of law, or its surrender without the written consent of the board, shall not, during
9 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
10 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
11 provided by law or to enter an order suspending or revoking the license or otherwise taking
12 disciplinary action against the licensee on any such ground. . . .”

13 **STATUTORY PROVISIONS**

14 12. Section 4022 states:

15 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self use in humans
16 or animals, and includes the following:

17 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
18 prescription,” “Rx only,” or words of similar import.

19 “(b) Any device that bears the statement: “Caution: federal law restricts this device to sale
20 by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled
21 in with the designation of the practitioner licensed to use or order use of the device.

22 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only
23 on prescription or furnished pursuant to Section 4006.”

24 13. Section 4081 states, in relevant part:

25 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
26 or dangerous devices shall be at all times during business hours open to inspection by authorized
27 officers of the law, and shall be preserved for at least three years from the date of making. A
28 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food

1 animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
2 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
3 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
4 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
5 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

6 “(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food
7 animal drug retailer shall be jointly responsible, with the pharmacist in charge or representative-
8 in-charge, for maintaining the records and inventory described in this section. . . .”

9 14. Section 4301 provides in relevant part:

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

13 “....

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

16 “....

17 “(j) The violation of any of the statutes of this state, of any other state, or of the United
18 States regulating controlled substances and dangerous drugs.

19 “....

20 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
21 violation of or conspiring to violate any provision or term of this chapter or of the applicable
22 federal and state laws and regulations governing pharmacy, including regulations established by
23 the board or by any other state or federal regulatory agency.

24 “....

25 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
26 board.”

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1 15. Section 4126.5 states, in relevant part:

2 “(a) A pharmacy may furnish dangerous drugs only to the following:

3 “(1) A wholesaler owned or under common control by the wholesaler from whom the
4 dangerous drug was acquired.

5 “(2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

6 “(3) A licensed wholesaler acting as a reverse distributor.

7 “(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous
8 drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs
9 pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary
10 shortage.

11 “(5) A patient or to another pharmacy pursuant to a prescription or as otherwise
12 authorized by law.

13 “(6) A health care provider that is not a pharmacy but that is authorized to purchase
14 dangerous drugs.

15 “(7) To another pharmacy under common control.

16 “(b) Notwithstanding any other provision of law, a violation of this section may subject
17 the person or persons who committed the violation to a fine not to exceed the amount specified in
18 Section 125.9 for each occurrence pursuant to a citation issued by the board.

19 “(c) Amounts due from any person under this section on or after January 1, 2005, shall be
20 offset as provided under Section 12419.5 of the Government Code. Amounts received by the
21 board under this section shall be deposited into the Pharmacy Board Contingent Fund.

22 “(d) For purposes of this section, ‘common control’ means the power to direct or cause the
23 direction of the management and policies of another person whether by ownership, by voting
24 rights, by contract, or by other means.”

25 16. Section 4169 provides in relevant part:

26 “(a) A person or entity may not do any of the following:

27 “(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale
28 with a person or entity that is not licensed with the board as a wholesaler or pharmacy.

1 "....

2 "(3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably
3 should have known were misbranded, as defined in Section 111335 of the Health and Safety
4 Code.

5 "....

6 "(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or
7 dangerous devices for at least three years.

8 "...."

9 17. Section 4332 provides in relevant part:

10 "Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or
11 who, when called upon by an authorized officer or a member of the board, fails, neglects, or
12 refuses to produce or provide the records within a reasonable time, or who willfully produces or
13 furnishes records that are false, is guilty of a misdemeanor."

14 18. Section 110290 of the Health and Safety Code provides:

15 "In determining whether the labeling or advertisement of a food, drug, device, or cosmetic is
16 misleading, all representations made or suggested by statement, word, design, device, sound, or
17 any combination of these, shall be taken into account. The extent that the labeling or advertising
18 fails to reveal facts concerning the food, drug, device, or cosmetic or consequences of customary
19 use of the food, drug, device, or cosmetic shall also be considered."

20 19. Section 111335 of the Health and Safety Code provides:

21 "Any drug or device is misbranded if its labeling or packaging does not conform to the
22 requirements of Chapter 4 (commencing with Section 110290)."

23 20. Section 111380 of the Health and Safety Code provides:

24 "All regulations and their amendments pertaining to foods, drugs, devices, and cosmetics that are
25 in effect on the effective date of this part, or that are adopted on or after that date, pursuant to the
26 Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C. Sec. 1451 et seq.) shall be the
27 regulations of this state. The department may, when necessary, prescribe any packaging and
28 labeling regulation for foods, drugs, devices, and cosmetics whether or not the regulation is in

1 accordance with regulations adopted under the Fair Packaging and Labeling Act. No regulations
2 shall be adopted that are contrary to the labeling requirements for the net quantity of contents
3 required pursuant to Section 4 of the Federal Fair Packaging and Labeling Act and the regulations
4 adopted pursuant to that section.”

5 REGULATIONS

6 21. California Code of Regulations, title 16, section 1718, states:

7 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions Code
8 shall be considered to include complete accountability for all dangerous drugs handled by every
9 licensee enumerated in Sections 4081 and 4332.

10 “The controlled substances inventories required by Title 21, CFR [Code of Federal Regulations],
11 Section 1304 shall be available for inspection upon request for at least 3 years after the date of the
12 inventory.”

13 22. Title 21, Federal Code of Regulations, section 201.100, provides in relevant part:

14 “....

15 “(d) Any labeling, as defined in section 201(m) of the act, whether or not it is on or within
16 a package from which the drug is to be dispensed, distributed by or on behalf of the manufacturer,
17 packer, or distributor of the drug, that furnishes or purports to furnish information for use or
18 which prescribes, recommends, or suggests a dosage for the use of the drug (other than dose
19 information required by paragraph (b)(2) of this section and §§ 201.105(b)(2) contains:

20 “(1) Adequate information for such use, including indications, effects, dosages, routes,
21 methods, and frequency and duration of administration and any relevant warnings, hazards,
22 contraindications, side effects, and precautions, under which practitioners licensed by law to
23 administer the drug can use the drug safely and for the purposes for which it is intended,
24 including all conditions for which it is advertised or represented; and if the article is subject to
25 section 505 of the act, the parts of the labeling providing such information are the same in
26 language and emphasis as labeling approved or permitted, under the provisions of section 505,
27 and any other parts of the labeling are consistent with and not contrary to such approved or
28 permitted labeling;”

1 **COST RECOVERY**

2 23. Section 125.3 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 for the reasonable costs of the investigation and enforcement of the case.

5 **DRUGS**

6 24. Combivir is the trade name for a combination drug containing lamivudine (trade
7 name Epivir, a.k.a. 3TC) and zidovudine (trade name Retrovir, a.k.a. AZT and ZDV) which is
8 used for the treatment of HIV. It is a dangerous drug pursuant to section 4022.

9 25. Zyprexa is the trade name for olanzapine an atypical antipsychotic medication
10 which is used for treating schizophrenia or bipolar disorder. It is a dangerous drug pursuant to
11 section 4022.

12 26. Benicar HCT is the trade name for olmesartan medoxomil which is used for
13 controlling high blood pressure. It is a dangerous drug pursuant to section 4022.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Respondents Drug Emporium No. 807 and Dallal -**
16 **Failure to Maintain and Provide Pharmacy Records)**

17 27. Respondents Drug Emporium No. 807 and Dallal are subject to disciplinary action
18 under Section 4301, subdivisions (j) and (o), and Section 4081, subdivisions (a) and (b) in that
19 Respondents failed to maintain records of acquisition or disposition of dangerous drugs for at
20 least three (3) years and failed, neglected or refused to provide records of acquisition or
21 disposition of dangerous drugs upon request by the Board in violation of Section 4332. The
22 circumstances are as follows:

23 28. On or about September 18, 2006, the Board received information and
24 documentation from the Oregon State Board of Pharmacy concerning purchase orders, invoices
25 and pedigrees found at Big A. Distributors in Portland, Oregon. The Oregon State Board of
26 Pharmacy reported that Respondent Drug Emporium No. 807 was selling legend pharmaceuticals
27 to Big A. Distributors in Portland, Oregon.

1 29. On or about March 13, 2007, an F.D.A. investigator informed the Board that it had
2 discovered misbranded Combivir. The F.D.A. investigator identified pharmacies that may have
3 received the misbranded Combivir, including Respondent Drug Emporium No. 807.

4 30. On or about March 19, 2007, two Board investigators traveled to Respondent Drug
5 Emporium No. 807 to track down the suspected lot numbers of the misbranded Combivir. The
6 investigators explained to the pharmacist-in-charge at Respondent Drug Emporium No. 807 that it
7 was possible that Respondent Drug Emporium No. 807 had received misbranded Combivir. One
8 of the investigators requested the pharmacist-in-charge at Respondent Drug Emporium No. 807 to
9 check the computer records to determine if Combivir had been dispensed or purchased by
10 Respondent Drug Emporium No. 807 during the last three (3) years. The investigators also
11 performed a physical inspection of the premises. There were no invoices showing any purchases
12 of Combivir. The pharmacist-in-charge showed the investigator a "Drug Utilization Report"
13 which showed that Respondent Drug Emporium No. 807 had not dispensed any prescriptions for
14 Combivir from January 1, 2000 to March 19, 2007.

15 31. On or about March 19, 2007, the Board requested from Respondent Drug
16 Emporium all records of acquisition and disposition for Combivir for the time period of January
17 1, 2004 through March 19, 2007.

18 32. On or about March 21, 2007, the Board's investigator received a reply from
19 Respondent Dallal, president and sole owner of Respondent Drug Emporium No. 807. In his
20 reply, Respondent Dallal stated that there were no purchases and no sales of Combivir from
21 Respondent Drug Emporium from January 1, 2004 through March 19, 2007.

22 33. In fact, Respondent Drug Emporium No. 807 had purchased Combivir from DIT
23 Healthcare Distribution, Inc., and had transferred Combivir with DIT Healthcare Distribution,
24 Inc. between September 15, 2005 and October 18, 2005, including:

25 a. on or about September 15, 2005, 30 bottles of Combivir tablets, each bottle 60
26 Combivir tablets at a wholesale cost of \$511.79, for a total cost of \$15,353.70 per Invoice
27 Number 38655;

28 ///

b. on or about September 19, 2005, 40 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of 517.81, for a total cost of \$20,712.40 per Invoice Number 38713;

c. on or about September 20, 2005, 12 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of \$517.81, for a total cost of \$6,213.72 per Invoice Number 38782;

d. on or about September 26, 2005, 48 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of \$517.81, for a total cost of \$24,854.88 per Invoice Number 38984;

e. on or about September 29, 2005, 70 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of \$517.81, for a total cost of \$36,246.70 per Invoice Number 39092;

f. on or about September 29, 2005, 30 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of \$517.81, for a total cost of \$15,534.30 per Invoice Number 39107;

g. on or about September 30, 2005, 70 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of \$517.82, for a total cost of \$36,247.40 per Invoice Number 39241; and

h. on or about October 18, 2005, 70 bottles of Combivir tablets, each bottle containing 60 Combivir tablets at a wholesale cost of \$517.82, for a total cost of \$36,247.40 per Credit Memo Number 39777.

SECOND CAUSE FOR DISCIPLINE

(Respondent Dallal - Making a False Document)

34. Respondent Dallal is subject to disciplinary action under Section 4301(g) in that he knowingly made or signed a document that falsely represented that there were no purchases of Combivir by Respondent Drug Emporium and no sales of Combivir from Respondent Drug Emporium from January 1, 2005 through March 19, 2007 as set forth in paragraphs 28 through 33 inclusive which are incorporated here by this reference.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Respondent Dallal - Engaging in Subversive Conduct)**

3 36. Respondent Dallal is subject to disciplinary action under Section 4301(q) in that he
4 engaged in conduct that subverted or attempted to subvert an investigation of the Board as set
5 forth in paragraphs 28 through 33 inclusive which are incorporated here by this reference.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Respondents Drug Emporium #807 and Dallal –**
8 **Selling Dangerous Drugs to an Unlicensed Wholesaler)**

9 37. Respondents Drug Emporium #807 and Dallal are subject to disciplinary action
10 under Section 4301, subsections (j) and (o), in that Drug Emporium #807 purchased, traded, sold,
11 or transferred dangerous drugs at wholesale with an entity that is not licensed with the Board as a
12 wholesaler or pharmacy in violation of Section 4169, subsection (a)(1), as set forth in paragraph
13 33 which is incorporated here by this reference.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Respondent Dallal – Selling Dangerous Drugs to an Unlicensed Wholesaler)**

16 38. Respondent Dallal is subject to disciplinary action under Section 4301, subsections
17 (j) and (o), in that Big A Drugstore-South Gate purchased, traded, sold, or transferred dangerous
18 drugs at wholesale with an entity that is not licensed with the Board as a wholesaler or pharmacy
19 in violation of Section 4169, subsection (a)(1), as follows:

20 **Minnesota Independent Cooperative**

21 39. Big A Drugstore-South Gate sold dangerous drugs at wholesale to Minnesota
22 Independent Cooperative between March 27, 2006 and January 22, 2007, including:

23 a. on or about March 27, 2006, Big A Drugstore-South Gate sold dangerous drugs to
24 Minnesota Independent Cooperative at a wholesale cost of \$21,136.14 per Invoice Number
25 301525;

26 b. on or about March 27, 2006, Big A Drugstore-South Gate sold dangerous drugs to
27 Minnesota Independent Cooperative at a wholesale cost of \$162.00 per Invoice Number 301510-

28 D;

1 c. on or about March 28, 2006, Big A Drugstore-South Gate sold dangerous drugs to
2 Minnesota Independent Cooperative at a wholesale cost of \$4,406.92 per Invoice Number
3 301513-A;

4 d. on or about March 28, 2006, Big A Drugstore-South Gate sold dangerous drugs to
5 Minnesota Independent Cooperative at a wholesale cost of \$213.96 per Invoice Number 301521-
6 B;

7 e. on or about March 29, 2006, Big A Drugstore-South Gate sold dangerous drugs to
8 Minnesota Independent Cooperative at a wholesale cost of \$11,283.84 per Invoice Number
9 301505I;

10 f. on or about March 29, 2006, Big A Drugstore-South Gate sold dangerous drugs to
11 Minnesota Independent Cooperative at a wholesale cost of \$612.84 per Invoice Number 301512-
12 A;

13 g. on or about March 29, 2006, Big A Drugstore-South Gate sold dangerous drugs to
14 Minnesota Independent Cooperative at a wholesale cost of \$2,624.27 per Invoice Number
15 301512-B;

16 h. on or about March 29, 2006, Big A Drugstore-South Gate sold dangerous drugs to
17 Minnesota Independent Cooperative at a wholesale cost of \$905.88 per Invoice Number 301513-
18 B;

19 i. on or about March 30, 2006, Big A Drugstore-South Gate sold dangerous drugs to
20 Minnesota Independent Cooperative at a wholesale cost of \$690.92 per Invoice Number 301513-
21 C;

22 j. on or about March 30, 2006, Big A Drugstore-South Gate sold dangerous drugs to
23 Minnesota Independent Cooperative at a wholesale cost of \$83.70 per Invoice Number 301515-A;

24 k. on or about March 30, 2006, Big A Drugstore-South Gate sold dangerous drugs to
25 Minnesota Independent Cooperative at a wholesale cost of \$8,221.44 per Invoice Number
26 301526-A;

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a. on or about March 15, 2006, Big A Drugstore-South Gate sold dangerous drugs to Wholesale Drug Corporation at a wholesale cost of \$45,067.03 per Invoice Number 301517; and

c. on or about March 22, 2006, Big A Drugstore-South Gate sold dangerous drugs to Wholesale Drug Corporation at a wholesale cost of \$2,822.40 per Invoice Number 301505-G;

41. Big A Drugstore-South Gate sold dangerous drugs at wholesale to Big A Distribution between December 21, 2005 and January 3, 2006, including:

b. on or about January 3, 2006, Big A Drugstore-South Gate sold dangerous drugs to Big A Distribution at a wholesale cost of \$81,180.00 per Invoice Number 301461.

(Respondent Dallah - Unlawful Furnishing of Dangerous Drugs by Pharmacy)

42. Respondent Dallal is subject to disciplinary action under Section 4301, subsection (j), for violation of Code section 4126.5 in that Big A Drugstore-South Gate furnished dangerous drugs to wholesale drug distributors that did not meet the requirements of the law as set forth in paragraphs 39 through 41 inclusive, which are incorporated here by this reference.

(Respondent Dallah - Selling Misbranded Drugs)

43. Respondent Dallal is subject to disciplinary action under Section 4301, subsections (j) and (o) for violation of Code section 4169, subdivision (a)(3) in that Respondents sold misbranded drugs. The circumstances are as follows:

14

1 a. On or about March 8, 2006, Big A Drugstore-South Gate sold 15 containers of
2 Zyprexa 10 mg and 48 containers of Zyprexa 20mg without package inserts per Invoice No.
3 301505-G; and

4 b. On or about March 15, 2006, Big A Drugstore-South Gate sold 1 container of
5 Benicar HTC 25 mg containing 40 tablets without package inserts per Invoice Number 301510-B.

6 PRAYER

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

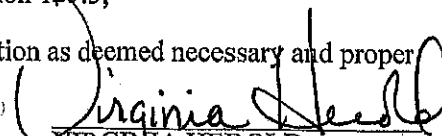
9 1. Revoking or suspending Pharmacy Permit Number PHY 45373 issued to
10 Respondent Drug Emporium No. 807;

11 2. Revoking or suspending Pharmacist License No: RPH 25391 issued to Edward
12 Joseph Dallal, R.P.H.

13 3. Ordering Respondent Drug Emporium No. 807 and Respondent Dallal to pay the
14 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3;

16 4. Taking such other and further action as deemed necessary and proper

17 Dated: 3/2/11


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

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