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

In the Matter of the Statement of Issues  
Against:

**CRISTINA GARCIA**

**Applicant for Pharmacy Technician  
Registration**

Respondent.

Case No. 4101

OAH No. 2012100524

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

**FINDINGS OF FACT**

1. On or about May 4, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 4101 against Cristina Garcia (Respondent) before the Board of Pharmacy.

2. On or about June 16, 2010, Respondent filed an application dated June 1, 2010, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

3. On or about March 1, 2011, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about April 7, 2011, Respondent appealed the Board's denial of her application and requested a hearing.

4. On or about May 23, 2012, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues No. 4101, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address on the application form, which was and is: 740 N. Pacific Avenue, San Pedro, CA 90731. A copy of the Statement of Issues is attached as exhibit A.

5. Service of the Statement of Issues was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

6. On or about April 7, 2011, Respondent appealed the denial of her application and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's address on the application and it informed her that an administrative hearing in this matter was scheduled for January 24, 2013. Respondent failed to appear at that hearing. A copy of the Notice of Hearing and proof of service is attached as exhibit B.

7. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing based upon the allegation set forth in the Statement of Issues and Respondent's failure to establish entitlement to issuance of a license.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Cristina Garcia has subjected her application for a Pharmacy Technician Registration to denial.

2. Service of Statement of Issues No. 4101 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

1           a.    Violation of section 480 (a)(1) and CCR section 1770 for convictions of five (5)  
2 substantially related crimes between the years 1995 and 1999, involving thefts and driving under  
3 the influence;

4           b.    Violation of section 4301(p) and 480 in that Respondent committed acts which  
5 if done by a licentiate of the business and profession in question, would be grounds for  
6 suspension or revocation of her license.

7        ///

8        ///

9        ///

ORDER

IT IS SO ORDERED that the application of Respondent Cristina Garcia is hereby denied.

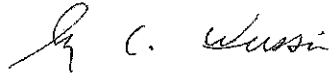
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 14, 2014.

It is so ORDERED ON March 14, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
STAN C. WEISSER  
Board President

Attachment:

Exhibit A: Statement of Issues No. 4101

## **Exhibit A**

### **Statement of Issues No. 4101**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 ANTONIO LOPEZ, JR.  
Deputy Attorney General  
4 State Bar No. 206387  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2536  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 4101

13 **CRISTINA GARCIA**  
14 740 N. Pacific Avenue  
San Pedro, CA 90731

**STATEMENT OF ISSUES**

15 Applicant for Pharmacy Technician  
16 Registration

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about June 16, 2010, the Board of Pharmacy (Board), received an application  
24 for Pharmacy Technician Registration from Cristina Garcia (Respondent). On or about June 1,  
25 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,  
26 and representations in the application. The Board denied the application on March 1, 2011.

27 ///

28 ///

## JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 480 provides, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

....

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

5. Section 490 provides, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
4 discipline a licensee for conviction of a crime that is independent of the authority granted under  
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
11 made suspending the imposition of sentence, irrespective of a subsequent order under the  
12 provisions of Section 1203.4 of the Penal Code."

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is  
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 provides, in pertinent part:

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

19 . . . .

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

23 . . . .

24 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
25 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
26 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
27 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
28 practice authorized by the license.



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

" (k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

" (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.

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

1       "(p) Actions or conduct that would have warranted denial of a license."

2                               **REGULATORY PROVISIONS**

3       8.     California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

10                           **FIRST CAUSE FOR DENIAL OF APPLICATION**

11                               **(Conviction of Substantially-Related Crimes)**

12       9.     Respondent's application is subject to denial under sections 480, subdivision (a)(1), in  
13 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was  
14 convicted of crimes as follows:

15       a.     On or about February 9, 2009, after pleading *nolo contendere*, Respondent was  
16 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft],  
17 in the criminal proceedings entitled *The People of the State of California v. Cristina Garcia*  
18 (Super.Ct. Los Angeles County, 2009, No. 9BF00031). The Court sentenced Respondent to serve  
19 1 day in jail, placed her on probation for a period of 36 months, and fined her.

20       b.     On or about March 13, 2009, after pleading *nolo contendere*, Respondent was  
21 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft];  
22 and one misdemeanor count of violating Penal Code section 666, [petty theft with priors], in the  
23 criminal proceedings entitled *The People of the State of California v. Cristina Garcia* (Super.Ct.  
24 Los Angeles County, 2009, No. 9BF00942). The Court sentenced Respondent to 10 days in jail,  
25 placed her on probation for a period of 36 months, and fined her. Respondent was previously  
26 convicted in the California of violating Penal Code section 484, subdivision (a) [theft], and served  
27 a term in a penal institution and was imprisoned therein as a condition of probation. Respondent  
28 was subsequently convicted of violating Penal Code section 666, [petty theft with priors].

1           c.    On or about November 21, 2007, after pleading *nolo contendere*, Respondent was  
2 convicted of one misdemeanor count of violating Vehicle Code section 20002, subdivision (a)  
3 [driving a vehicle causing damage to any property]; and one misdemeanor count of violating  
4 Vehicle Code section 12500, subdivision (a) [driving while driver's license is suspended or  
5 revoked], in the criminal proceedings entitled *The People of the State of California v. Cristina*  
6 *Garcia* (Super.Ct. Los Angeles County, 2007, No. 7WW01940). The Court sentenced  
7 Respondent to serve 8 days total in jail, placed her on probation for a period of 36 months, and  
8 fined her. The circumstances surrounding the conviction are that on or about March 10, 2007,  
9 after investigating a vehicle collision, Respondent was identified as the driver who fled the scene  
10 of an earlier collision. Respondent admitted to being the driver of the vehicle that fled the scene.  
11 Respondent was subsequently convicted of violating Vehicle Code section 20002, subdivision (a)  
12 [driving a vehicle causing damage to any property; and Vehicle Code section 12500, subdivision  
13 (a) [driving while driver's license is suspended or revoked.]

14           d.    On or about August 11, 2006, after pleading *nolo contendere*, Respondent was  
15 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
16 [driving while having 0.08% and more, by weight, of alcohol in her blood], in the criminal  
17 proceedings entitled *The People of the State of California v. Cristina Garcia* (Super.Ct. Los  
18 Angeles County, 2006, No. 6DY04203). The Court sentenced Respondent to 2 days in Jail,  
19 placed her on probation for a period of 36 months, and fined her. The circumstances surrounding  
20 the conviction are that on or about May 19, 2006, during a routine traffic stop by the Downey  
21 Police Department, Respondent was stopped because she had spun out of control making a left  
22 turn. The officer observed Respondent to have bloodshot, watery eyes, and a strong smell of an  
23 alcoholic beverage coming from her breath. Respondent admitted to having four shots of tequila.  
24 Respondent agreed to a series of field sobriety test which she failed to complete satisfactorily.  
25 Respondent was subsequently given two alcohol breath tests, with results of .18 BAC and .19  
26 BAC.

27           e.    On or about April 27, 2005, after pleading *nolo contendere*, Respondent was  
28 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)

1 [driving while having 0.08% and more, by weight, of alcohol in her blood], in the criminal  
2 proceedings entitled *The People of the State of California v. Cristina Garcia* (Super.Ct. Los  
3 Angeles County, 2005, No. 5VN01517). The Court sentenced Respondent to 13 days in Jail,  
4 placed her probation for a period of 36 months and fined her. The circumstances surrounding the  
5 conviction are that on or about April 2, 2005, Respondent unlawfully drove a vehicle while  
6 having 0.08% and more, by weight, of alcohol in her blood.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Warranting Denial of Licensure)**

9 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and  
10 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a  
11 licentiate of the business and profession in question, would be grounds for suspension or  
12 revocation of her license.

13 a. Respondent was convicted of crimes substantially related to the qualifications,  
14 functions or duties of a pharmacy technician which to a substantial degree evidence her present or  
15 potential unfitness to perform the functions authorized by his license in a manner consistent with  
16 the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490, in  
17 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
18 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs  
19 (a) and (e), inclusive, as though set forth fully.

20 b. On or about December 9, 2008 and December 7, 2008, Respondent committed acts  
21 involving moral turpitude, dishonesty, fraud, or deceit in violation of section 4301, subdivision  
22 (f). Complainant refers to, and by this reference incorporates, the allegations set forth above in  
23 paragraph 9, subparagraphs (a), (b) and (c), inclusive, as though set forth fully.

24 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or  
25 injurious to herself, another person, or the public, in violation of section 4301, subdivision (h).  
26 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
27 paragraph 9, subparagraphs (d) and (e), inclusive, as though set forth fully.

28 d. Respondent was convicted of crimes involving the consumption of alcoholic

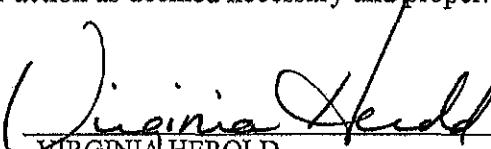
1 beverages, in violation of section 4301, subdivision (k). Complainant refers to, and by this  
2 reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (d) and (e),  
3 inclusive, as though set forth fully.

4 **PRAYER**

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

- 7 1. Denying the application of Cristina Garcia for registration as a Pharmacy Technician;  
8 and  
9 2. Taking such other and further action as deemed necessary and proper.

10  
11 DATED: 5/4/12

  
12 VIRGINIA HEROLD  
13 Executive Officer  
14 Board of Pharmacy  
15 Department of Consumer Affairs  
16 State of California  
17 Complainant

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LA2011601008

## **Exhibit B**

### **Notice of Hearing & Proof of Service**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 ANTONIO LOPEZ, JR.  
Deputy Attorney General  
4 State Bar No. 206387  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2536  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

10 In the Matter of the Statement of Issues  
Against:

11 **CRISTINA GARCIA**

12 Respondent.  
13

Case No. 4101

OAH No. 2012100524

**NOTICE OF HEARING**  
[Gov. Code, § 11509.]

Hearing: Thursday, January 24, 2013  
14

15  
16 YOU ARE HEREBY NOTIFIED that a hearing in this matter will commence on  
17 **Thursday, January 24, 2013, at 1:30 p.m.** before an Administrative Law Judge at the address  
18 listed below.

19 **Office of Administrative Hearings**  
20 **320 West Fourth Street, Suite 630**  
21 **Los Angeles, CA 90013**

22 The hearing will be conducted before the Board of Pharmacy, Department of Consumer  
23 Affairs by an Administrative Law Judge of the Office of Administrative Hearings, upon the  
24 charges made in the Statement of Issues served upon you.

25 If you object to the place of hearing, you must notify the presiding officer within ten (10)  
26 days after this notice is served on you. Failure to notify the presiding officer within ten (10) days  
27 will deprive you of a change in the place of hearing.  
28

1 You may be present at the hearing. You have the right to be represented by an attorney at  
2 your own expense. You are not entitled to the appointment of an attorney to represent you at  
3 public expense. You are entitled to represent yourself without legal counsel. You may present  
4 any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying  
5 against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses  
6 and the production of books, documents, or other things by applying to the Office of  
7 Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013, telephone:  
8 (213) 576-7200.

9 INTERPRETER: Pursuant to section 11435.20 of the Government Code, the hearing shall  
10 be conducted in the English language. If a party or a party's witness does not proficiently speak  
11 or understand the English language and before commencement of the hearing requests language  
12 assistance, an agency subject to the language assistance requirement in section 11435.15 of the  
13 Government Code shall provide a certified interpreter or an interpreter approved by the  
14 administrative law judge conducting the proceedings. The cost of providing the interpreter shall  
15 be paid by the agency having jurisdiction over the matter if the administrative law judge or  
16 hearing officer so directs, otherwise by the party for whom the interpreter is provided. If you or a  
17 witness requires the assistance of an interpreter, ample advance notice of this fact should be given  
18 to the Office of Administrative Hearings so that appropriate arrangements can be made.

19 CONTINUANCES: Under section 11524 of the Government Code, the agency may grant a  
20 continuance, but when an administrative law judge of the Office of Administrative Hearings has  
21 been assigned to the hearing, no continuance may be granted except by him or her or by the  
22 presiding Administrative Law Judge for good cause. When seeking a continuance, a party shall  
23 apply for the continuance within ten (10) working days following the time the party discovered or  
24 reasonably should have discovered the event or occurrence which establishes good cause for the  
25 continuance. A continuance may be granted for good cause after the ten (10) working days have  
26 lapsed only if the party seeking the continuance is not responsible for and has made a good faith  
27 effort to prevent the condition or event establishing the good cause.



1 Continuances are not favored. If you need a continuance, immediately write or call the  
2 Office of Administrative Hearings: 320 West Fourth Street, Suite 630, Los Angeles, CA 90013  
3 telephone: (213) 576-7200.

4 Dated: December 26, 2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARC D. GREENBAUM  
Supervising Deputy Attorney General

8 *Chia D. Baus for*  
9 ANTONIO LOPEZ, JR.  
10 Deputy Attorney General  
11 *Attorneys for Complainant*

12 *Antonio Lopez, Jr.*

13 LA2011601008  
14 51212305.doc

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**

(Separate Mailings)

Case Name: **CRISTINA GARCIA**

OAH No.: **2012100524**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 27, 2012, I served the attached **NOTICE OF HEARING** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **NOTICE OF HEARING** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**Cristina Garcia**  
**740 N. Pacific Avenue**  
**San Pedro, CA 90731**

**Certified Article Number**

7196 4008 4111 4424 2181

**SENDERS RECORD**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 27, 2012, at Los Angeles, California.

Teresa Sutton  
Declarant

Teresa Sutton  
Signature

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51212309.doc