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8		RE THE PHARMACY
9	DEPARTMENT OF C	CONSUMER AFFAIRS CALIFORNIA
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11	In the Matter of the Accusation Against:	Case No. 5119
12	In the Watter of the Execusation regulate.	
13	FOSTER PHARMACEUTICALS	DEFAULT DECISION AND ORDER
14	2603 Main Street, Suite 800 Irvine, CA 92614	
15	Wholesale Permit No. WLS 6248	[Gov. Code, §11520]
16	GEORGE ANTHONY CARILLO	· ·
17	P.O. Box 2408 Fullerton, CA 92837	
18	Designated Representative License No. EXC 22249	
19		
20	Respondents.	
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23	FINDINGS OF FACT	
24	1. On or about September 5, 2014, Complainant Virginia K. Herold, in her official	
25	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,	
26	filed Accusation No. 5119 against Foster Pharmaceuticals (Respondent Foster Pharmaceuticals)	
27	and George Anthony Carillo (Respondent George Carillo) before the Board of Pharmacy.	
28	(Accusation attached as Exhibit A.)	·
		1 DEFAULT DECISION AND ORDER

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2. On or about July 16, 2013, the Board of Pharmacy (Board) issued Wholesale Permit No. WLS 6248 to Respondent Foster Pharmaceuticals. The Wholesale Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 5119 and will expire on July 1, 2015, unless renewed.

3. On or about April 24, 2013, the Board issued Designated Representative License Number EXC 22249 to George Carillo. The Designated Representative License was in full force and effect at all times relevant to the charges brought in Accusation No. 5119 and will expire on April 1, 2015, unless renewed.

4. On or about September 12, 2014, Respondent Foster Pharmaceuticals was served by Certified and First Class Mail copies of the Accusation No. 5119, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent Foster Pharmaceutical's address of record was and is: 2603 Main Street, Suite 800, Irvine, CA 92614.

5. On or about September 12, 2014, Respondent George Carillo was served by Certified and First Class Mail copies of the Accusation No. 5119, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent George Carillo's address of record was and is: P.O. Box 2408, Fullerton, CA 92837.

Service of the Accusation was effective as a matter of law under the provisions of
 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
 124.

7. On or about September 23, 2014, the aforementioned documents served on
 Respondent Foster Pharmaceuticals were returned by the U.S. Postal Service marked "Unable to
 Forward."

1	8. On or about September 22, 2014, Respondent George Carillo executed the Certified	
2	Mail Return Receipt indicating that he had received the aforementioned documents.	
3	9. Government Code section 11506 states, in pertinent part:	
4	(c) The respondent shall be entitled to a hearing on the merits if the respondent	
5 6	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.	
7	10. Respondents failed to file a Notice of Defense within 15 days after service upon them	
-8	of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.	
9	5119.	
10	11. California Government Code section 11520 states, in pertinent part:	
11	(a) If the respondent either fails to file a notice of defense or to appear at the	
12	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.	
13		
14	12. Pursuant to its authority under Government Code section 11520, the Board finds	
15	Respondents are in default. The Board will take action without further hearing and, based on the	
16	relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as	
17	taking official notice of all the investigatory reports, exhibits and statements contained therein on	
18	file at the Board's offices regarding the allegations contained in Accusation No. 5119, finds that	
19	the charges and allegations in Accusation No. 5119, are separately and severally, found to be true	
20	and correct by clear and convincing evidence.	
21	13. Taking official notice of its own internal records, pursuant to Business and	
22	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation	
23	and Enforcement is \$2,950.00 as of October 7, 2014.	
24	DETERMINATION OF ISSUES	
25	1. Based on the foregoing findings of fact, Respondent Foster Pharmaceuticals has	
26	subjected its Wholesale Permit No. WLS 6248 and Respondent George Carillo has subjected his	
27	Designated Representative License No. EXC 22249 to discipline.	
28	2. The agency has jurisdiction to adjudicate this case by default.	
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	DEFAULT DECISION AND ORDER	

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3. The Board of Pharmacy is authorized to revoke Respondent Foster Pharmaceutical's Wholesale Permit and Respondent George Carillo's Designated Representative License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Respondents are subject to disciplinary action under Code section 4301(o), for
violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
drugs, including drugs used for the treatment of HIV and AIDS from an unlicensed entity, SD
Trading, an entity masquerading as JD Pharmaceutical Wholesale, Inc.

b. Respondents are subject to disciplinary action under Code sections 4301(o), for
violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and
disposition of dangerous drugs open for inspection or keep a current inventory as defined by
California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs
used for the treatment of HIV and AIDS, it sold to pharmacies from July 24, 2013 through August
1, 2013.

c. Respondents are subject to disciplinary action under Code section 4301(o), for
violating Code sections 4105 (a) and (c), in that Respondents failed to retain records for the
dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold
from July 24, 2013 through August 1, 2013.

d. Respondents are subject to disciplinary action under Code section 4301(q), for
subverting an investigation of the Board in that they made misrepresentations to the Board
Inspector about their purchase of dangerous drugs, including drugs used for the treatment of HIV
and AIDS drugs on July 6 and August 2, 2013 and did not produce the complete records of those
drug transactions even though they represented that they had access to them.

e. Respondents are subject to disciplinary action under Code section 4301 for
unprofessional conduct in that they engaged in the activities described above.

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#### ORDER

IT IS SO ORDERED that Wholesale Permit No. WLS 6248, heretofore issued to Respondent Foster Pharmaceuticals and Designated Representative License No. EXC 22249 issued to Respondent George Anthony Carillo are revoked.

IT IS FURTHER ORDERED that pursuant to Code section 4307, since discipline is 5 imposed on Wholesaler Permit Number WLS 6248, issued to Foster Pharmaceuticals and George 6 Anthony Carillo while acting as the manager, administrator, owner, member, officer, director, 7 associate, or partner of Foster Pharmaceuticals had knowledge of or knowingly participated in 8 any conduct for which Wholesaler Permit Number WLS 6248 was revoked, suspended or placed 9 on probation, George Anthony Carillo shall be prohibited from serving as a manager, 10 administrator, owner, member, officer, director, associate, or partner of a licensee until and if 11 Wholesaler Permit Number WLS 6248 is reinstated. 12

IT IS FURTHER ORDERED that pursuant to Code section 4307, since discipline is
imposed on Designated Representative License No. EXC 22249 issued to George Anthony
Carillo, George Anthony Carillo shall be prohibited from serving as a manager, administrator,
owner, member, officer, director, associate, or partner of a licensee until and if Designated
Representative License Number EXC 22249 is reinstated.

Pursuant to Government Code section 11520, subdivision (c), Respondents 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 Respondents. 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 December 3, 2014.

It is so ORDERED November 3, 2014.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By STAN C. WEISSER Board President

1	70959187.DOC/DOJ Matter ID:SD2014706773 A ttachment
2	Attachment: Exhibit A: Accusation
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	DEFAULT DECISION AND ORDER

# Exhibit A

Accusation

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1 2 3 4 5 6 7 8 9	BOARD OF	RE THE PHARMACY ONSUMER AFFAIRS
10		CALIFORNIA
11	In the Matter of the Accusation Against:	Case No. 5119
12	FOSTER PHARMACEUTICALS	
13	2603 Main Street, Suite 800 Irvine, CA 92614	ACCUSATION
14	Wholesale Permit No. WLS 6248	
15	GEORGE ANTHONY CARILLO	
16	P.O. Box 2408 Fullerton, CA 92837	
17 18	Designated Representative License No EXC 22249	
19	Respondents.	
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21	Complainant alleges:	
22	PARTIES	
23	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
24	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
25	2. On or about July 16, 2013, the Board of Pharmacy issued Wholesale Permit Number	
26	WLS 6248 to Foster Pharmaceuticals (Respondent Foster Pharmaceuticals). The Wholesale	
27	Permit was in full force and effect at all times relevant to the charges brought herein and will	
28	28 expire on July 1, 2015, unless renewed.	
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		Accusation

1	3. On or about April 24, 2013, the Board of Pharmacy issued Designated Representative	
2	License Number EXC 22249 to George Anthony Carillo (Respondent George Carillo.) The	
3	Designated Representative License was in full force and effect at all times relevant to the charges	
4	brought herein and will expire on April 1, 2015, unless renewed.	
5	JURISDICTION	
6	4. This Accusation is brought before the Board of Pharmacy (Board), Department of	
7	Consumer Affairs, under the authority of the following laws. All section references are to the	
8	Business and Professions Code unless otherwise indicated.	
9	5. Section 4011 of the Code provides that the Board shall administer and enforce both	
10	the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances	
11	Act [Health & Safety Code, §11000 et seq.].	
12	6. Section 4300(a) of the Code states that every license issued may be suspended or	
13	revoked.	
14	7. Section 4300.1 of the Code states:	
15 16 17	The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render	
18	<ul><li>a decision suspending or revoking the license.</li><li>8. Section 4307(a) of the Code states that:</li></ul>	
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20	Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or	
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22	has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly	
23	participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator,	
24	owner, member, officer, director, associate, or partner of a licensee as follows:	
25	(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five	
26	years.	
27	(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.	
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1	STATUTORY AND REGULATORY PROVISIONS
2	9. Section 4022 of the Code states
3	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
4	(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
5	without prescription," "Rx only," or words of similar import.
6 7	(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order
8	use of the device.
9	(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.
10	10. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include
11	"a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor,
12	agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes
13	possession of, any drug or device included in Section 4022."
14	11. Section 4053(a) of the Code states:
15	Notwithstanding Section 4051, the board may issue a license as a designated representative to provide sufficient and qualified supervision in a wholesaler or
16 17	veterinary food-animal drug retailer. The designated representative shall protect the public health and safety in the handling, storage, and shipment of dangerous drugs and dangerous devices in the wholesaler or veterinary food-animal drug retailer.
18	12. Section 4081 of the Code states:
19	(a) All records of manufacture and of sale, acquisition, or disposition of
20	dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every
21	manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or
22	establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the
23	Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
24	drugs or dangerous devices.
25 26	(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in
27	this section.
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	12 Section (105 multivisions (a) and (a) of the Code states	
	13. Section 4105, subdivisions (a) and (c) of the Code state:	
	(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.	
	(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.	
	14. Section 4160 of the Code provides, in pertinent part, that a wholesaler license sh	all-
re	uired for a person or entity to act as a wholesaler, that every wholesaler shall be supervise	ed c
n	maged by a Designated Representative in Charge, and that the Designated Representative	in
C	arge shall be responsible for the wholesaler's compliance with state and federal laws.	
	15. Section 4163(a) of the Code states:	
	A manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous drug or dangerous device to an unauthorized person.	
	16. Section 4169 of the Code states in pertinent part:	
	(a) A person or entity may not do any of the following:	
	(1) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices at wholesale with a person or entity that is not licensed with the board as a wholesaler or pharmacy.	
	· ·	
	(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.	
	17. Section 4301 of the Code states, in pertinent part:	
	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:	
	(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.	
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. . (q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

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18. California Code of Regulations, title 16, section 1718 states in pertinent part that "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

# COST RECOVERY

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

# DRUGS

20. Drugs utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) including, abilify, actos, aptripla, baraclude, combivar, complera, epzicom, gleevec, intelence, isentress, kaletra, norvir, prevista, reyataz, truvada, viramune, viread and ziagen. These are dangerous drugs pursuant to Business and Professions Code section 4022 and possess a high resale and street dollar value.

# FACTUAL ALLEGATIONS

21. Since July 16, 2013 and at all times mentioned herein, Respondent George Carillo was the Designated Representative-in-Charge (DRIC) of Respondent Foster Pharmaceuticals.

22. At all times mentioned herein, ST Trading was an entity that was not licensed by the
Board, had no premises or telephone numbers and was non-existent. On July 16, 2013,
Respondents purchased dangerous drugs, including drugs used for the treatment of HIV and AIDS
drugs at a total cost of \$1,146,917.52 from ST Trading.

26 23. On July 16, 2013, Respondents purchased HIV and AIDS drugs in the amount of
27 \$1,735,213.10. On August 2, 2013, Respondents purchased dangerous drugs including drugs
28 used for the treatment of HIV and AIDS as described in paragraph 20, above, in the amount of

\$369,589 from an unknown entity or persons. Respondents' records reflect that JD
 Pharmaceutical Wholesaler Inc. sold those drugs to Respondents. However, JD Pharmaceutical
 Wholesaler Inc. did not sell those drugs to Respondents.

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24. During an inspection on August 7, 2013, Respondent George Carillo informed the 4 Board inspector that Respondents purchased dangerous drugs from JD Pharmaceutical Wholesaler 5 Inc., but on August 9, 2013, Respondent George Carillo informed the Board inspector that 6 Respondents had not purchased drugs from JD Pharmaceutical Wholesaler Inc., explaining that 7 the sales invoices were actually "drug proposals." Respondents did not produce any records of 8 the purported transactions with JD Pharmaceutical Wholesaler Inc., other than two invoices, or 9 any other records reflecting the transactions between the entity or person who actually sold them 10 the dangerous drugs listed on the JD Pharmaceutical Wholesaler Inc. invoices. 11

12 25. From July 24, 2013 through August 1, 2013, Respondents did not maintain all the
13 records for the acquisition of dangerous drugs purchased for \$2,911,844.62 and the records of
14 disposition of those dangerous drugs, which Respondent sold for \$656,585.75.

# FIRST CAUSE FOR DISCIPLINE

### (Purchasing Drugs from Unlicensed Entities)

Respondents are subject to disciplinary action under Code section 4301(o), for
violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
drugs, including drugs used for the treatment of HIV and AIDS from an unlicensed entity, SD
Trading, an entity masquerading as JD Pharmaceutical Wholesale, Inc., as set forth in paragraphs
21 through 25 above, which are incorporated herein by reference.

### SECOND CAUSE FOR DISCIPLINE

(Failure to Keep Records of Acquisition and Disposition Open for Inspection and to Keep Current Inventory)

27. Respondents are subject to disciplinary action under Code sections 4301(o), for violating Code sections 4081(a) and (b) in that they failed to keep records of the acquisition and disposition of dangerous drugs open for inspection or keep a current inventory as defined by California Code of Regulations, title 16, section 1718 for the dangerous drugs, including drugs

1	used for the treatment of HIV and AIDS, it sold to pharmacies from July 24, 2013 through Aug	
2	1, 2013, as set forth in paragraphs 21 through 25, which are incorporated herein by reference.	
3	THIRD CAUSE FOR DISCIPLINE	
4	(Failure to Retain Records of Dangerous Drugs on Licensed Premises)	
5	28. Respondents are subject to disciplinary action under Code section 4301(0), for	
6	violating Code sections 4105 (a) and (c), in that Respondents failed to retain records for the	
7	dangerous drugs, including drugs used for the treatment of HIV and AIDS purchased and sold	
8	from July 24, 2013 through August 1, 2013, as set forth in paragraphs 21 through 25, which are	
9	incorporated herein by reference.	
10	FOURTH CAUSE FOR DISCIPLINE	
11	(Subverting an Investigation)	
12	29. Respondents are subject to disciplinary action under Code section 4301(q), for	
13	subverting an investigation of the Board in that they made misrepresentations to the Board	
14	Inspector about their purchase of dangerous drugs, including drugs used for the treatment of HIV	
15	and AIDS drugs on July 6 and August 2, 2013 and did not produce the complete records of those	
16	drug transactions even though they represented that they had access to them, as set forth in	
17	paragraphs 21 through 25, which are incorporated herein by reference.	
18	FIFTH CAUSE FOR DISCIPLINE	
19	(Unprofessional Conduct)	
20	30. Respondents are subject to disciplinary action under Code section 4301 for	
21	unprofessional conduct in that they engaged in the activities described in paragraphs 21 through	
22	25 above, which are incorporated herein by reference.	
23	OTHER MATTERS	
24	31. Pursuant to Code section 4307, if discipline is imposed on Wholesaler Permit	
25	Number WLS 6248, issued to Foster Pharmaceuticals and George Anthony Carillo while acting	
26	as the manager, administrator, owner, member, officer, director, associate, or partner of Foster	
27	Pharmaceuticals had knowledge of or knowingly participated in any conduct for which	
28	Wholesaler Permit Number WLS 6248 was revoked, suspended or placed on probation, George	
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- 1	Accusation	

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Anthony Carillo shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Wholesaler Permit Number WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248 is reinstated if it is revoked.

32. Pursuant to Code section 4307, if discipline is imposed on Designated
Representative License No. EXC 22249 issued to George Anthony Carillo, George Anthony
Carillo shall be prohibited from serving as a manager, administrator, owner, member, officer,
director, associate, or partner of a licensee for five years if Designated Representative License
Number EXC 22249 is placed on probation or until Designated Representative License Number
EXC 22249 is reinstated if it is revoked.

PRAYER

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

14 1. Revoking or suspending Wholesale Permit Number WLS 6248, issued to Foster
15 Pharmaceuticals;

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2. Revoking or suspending Designated Representative License Number EXC 22249,
17 issued to George Anthony Carillo;

Prohibiting George Anthony Carillo from serving as a manager, administrator,
 owner, member, officer, director, associate, or partner of a licensee for five years if Wholesaler
 Permit Number WLS 6248 is placed on probation or until Wholesaler Permit Number WLS 6248
 is reinstated if Wholesaler Permit Number WLS 6248 issued to Foster Pharmaceuticals is
 revoked;

4. Prohibiting George Anthony Carillo from serving as a manager, administrator,
 owner, member, officer, director, associate, or partner of a licensee for five years if Designated
 Representative License Number EXC 22249 is placed on probation or until Designated
 Representative License Number EXC 22249 is reinstated if Designated Representative License
 Number EXC 22249 issued to George Anthony Carillo is revoked;

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Ordering Foster Pharmaceuticals and George Anthony Carillo to pay the Board of 5. Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as deemed necessary and proper. 6. 9/5/14 DATED: VIRGINIA HEAOL Executive Office Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2014706773 51476816.doc Accusation

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