

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

In the Matter of the Accusation Against:

**GREEN'S PHARMACEUTICALS;
HEROLD NOEL**
521 W. 17TH St.
Long Beach, CA 90813

Original Wholesaler Permit No. WLS 4481

And

HILDA A. MATTHEWS
5381 Pine Avenue
Chino Hills, CA 91709
Designated Representative License No. EXC 18366

Respondent.

Case No. 4866

OAH No. 2015100817

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
GREEN'S PHARMACEUTICALS ONLY**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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5381 Pine Avenue
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20 Respondent.

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GREEN'S PHARMACEUTICALS ONLY**

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

23 PARTIES

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

1 subpoenas to compel the attendance of witnesses and the production of documents; the right to
2 reconsideration and court review of an adverse decision; and all other rights accorded by the
3 California Administrative Procedure Act and other applicable laws.

4 8. Respondent Owner voluntarily, knowingly, and intelligently waives and gives up
5 each and every right set forth above.

6 CULPABILITY

7 9. Respondent Owner admits the truth of each and every charge and allegation in
8 Accusation No. 4866.

9 10. Respondent Owner agrees that his Wholesaler Permit is subject to discipline and he
10 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11 CONTINGENCY

12 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
13 Owner understands and agrees that counsel for Complainant and the staff of the Board of
14 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
15 without notice to or participation by Respondent Owner. By signing the stipulation, Respondent
16 Owner understands and agrees that he may not withdraw his agreement or seek to rescind the
17 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
18 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
19 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
20 the parties, and the Board shall not be disqualified from further action by having considered this
21 matter.

22 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
23 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
24 signatures thereto, shall have the same force and effect as the originals.

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Wholesaler Permit No. WLS 4481 issued to Respondent
8 Green's Pharmaceuticals; Herold Noel is revoked. However, the revocation is stayed and
9 Respondent is placed on probation for two (2) years on the following terms and conditions.

10 1. **Obey All Laws**

11 Respondent Owner shall obey all state and federal laws and regulations.

12 Respondent Owner shall report any of the following occurrences to the board, in writing,
13 within seventy-two (72) hours of such occurrence:

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

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

25 2. **Report to the Board**

26 Respondent Owner shall report to the board quarterly, on a schedule as directed by the
27 board or its designee. The report shall be made either in person or in writing, as directed. Among
28 other requirements, Respondent Owner shall state in each report under penalty of perjury whether

1 there has been compliance with all the terms and conditions of probation. Failure to submit
2 timely reports in a form as directed shall be considered a violation of probation. Any period(s) of
3 delinquency in submission of reports as directed may be added to the total period of probation.
4 Moreover, if the final probation report is not made as directed, probation shall be automatically
5 extended until such time as the final report is made and accepted by the board.

6 **3. Interview with the Board**

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

12 **4. Cooperate with Board Staff**

13 Respondent Owner shall cooperate with the board's inspection program and with the board's
14 monitoring and investigation of respondent's compliance with the terms and conditions of his
15 probation. Failure to cooperate shall be considered a violation of probation.

16 **5. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, Respondent Owner shall
18 pay to the board its costs of investigation and prosecution in the amount of \$5,000. Respondent
19 Owner shall make said payments on a payment plan to be approved by the Board. There shall be
20 no deviation from this schedule absent prior written approval by the board or its designee. Failure
21 to pay costs by the deadline(s) as directed shall be considered a violation of probation.

22 The filing of bankruptcy by Respondent Owner shall not relieve respondent of his
23 responsibility to reimburse the board its costs of investigation and prosecution.

24 **6. Probation Monitoring Costs**

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

1 **7. Status of License**

2 Respondent Owner shall, at all times while on probation, maintain current licensure with
3 the board. If Respondent Owner submits an application to the board, and the application is
4 approved, for a change of location, change of permit or change of ownership, the board shall
5 retain continuing jurisdiction over the license, and the respondent shall remain on probation as
6 determined by the board. Failure to maintain current licensure shall be considered a violation of
7 probation.

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

12 **8. License Surrender While on Probation/Suspension**

13 Following the effective date of this decision, should Respondent Owner discontinue
14 business, Respondent Owner may tender the premises license to the board for surrender. The
15 board or its designee shall have the discretion whether to grant the request for surrender or take
16 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
17 the license, Respondent will no longer be subject to the terms and conditions of probation.

18 Upon acceptance of the surrender, Respondent Owner shall relinquish the premises wall
19 and renewal license to the board within ten (10) days of notification by the board that the
20 surrender is accepted. Respondent Owner shall further submit a completed Discontinuance of
21 Business form according to board guidelines and shall notify the board of the records inventory
22 transfer.

23 Respondent Owner shall also, by the effective date of this decision, arrange for the
24 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
25 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
26 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
27 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
28 days of its provision to the pharmacy's ongoing patients, Respondent Owner shall provide a copy

1 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
2 those patients for whom the pharmacy has on file a prescription with one or more refills
3 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
4 days.

5 Respondent Owner may not apply for any new licensure from the board for three (3) years
6 from the effective date of the surrender. Respondent Owner shall meet all requirements
7 applicable to the license sought as of the date the application for that license is submitted to the
8 board.

9 Respondent Owner further stipulates that he shall reimburse the board for its costs of
10 investigation and prosecution prior to the acceptance of the surrender.

11 **9. Notice to Employees**

12 Respondent Owner shall, upon or before the effective date of this decision, ensure that all
13 employees involved in permit operations are made aware of all the terms and conditions of
14 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
15 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
16 remain posted throughout the probation period. Respondent Owner shall ensure that any
17 employees hired or used after the effective date of this decision are made aware of the terms and
18 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
19 Respondent Owner shall submit written notification to the board, within fifteen (15) days of the
20 effective date of this decision, that this term has been satisfied. Failure to submit such
21 notification to the board shall be considered a violation of probation.

22 "Employees" as used in this provision includes all full-time, part-time,
23 volunteer, temporary and relief employees and independent contractors employed or
24 hired at any time during probation.

25 **10. Owners and Officers: Knowledge of the Law**

26 Respondent Owner shall provide, within thirty (30) days after the effective date of this
27 decision, signed and dated statements from its owners, including any owner or holder of ten
28 percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating

1 under penalty of perjury that said individuals have read and are familiar with state and federal
2 laws and regulations governing the practice of pharmacy. The failure to timely provide said
3 statements under penalty of perjury shall be considered a violation of probation.

4 **11. Posted Notice of Probation**

5 Respondent Owner shall prominently post a probation notice provided by the board in a
6 place conspicuous and readable to the public. The probation notice shall remain posted during
7 the entire period of probation.

8 Respondent Owner shall not, directly or indirectly, engage in any conduct or make any
9 statement which is intended to mislead or is likely to have the effect of misleading any patient,
10 customer, member of the public, or other person(s) as to the nature of and reason for the probation
11 of the licensed entity.

12 Failure to post such notice shall be considered a violation of probation.

13 **12. Violation of Probation**

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

19 If Respondent Owner violates probation in any respect, the board, after giving Respondent
20 Owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
21 order that was stayed. Notice and opportunity to be heard are not required for those provisions
22 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
23 the license. If a petition to revoke probation or an accusation is filed against respondent during
24 probation, the board shall have continuing jurisdiction and the period of probation shall be
25 automatically extended until the petition to revoke probation or accusation is heard and decided.

26 **13. Completion of Probation**

27 Upon written notice by the board or its designee indicating successful completion of
28 probation, respondent license will be fully restored.

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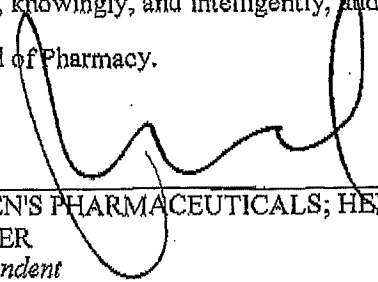
14. **Report of Controlled Substances - Promethazine with Codeine**

Respondent Owner shall submit quarterly reports to the board detailing the total acquisition and disposition of promethazine with codeine. Respondent Owner shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g. from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent Owner shall report on a quarterly basis as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Wholesaler Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

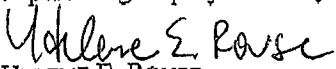
DATED: 05/20/16


GREEN'S PHARMACEUTICALS; HEROLD NOEL,
OWNER
Respondent

ENDORSEMENT

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

Dated: May 20, 2016

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General

HELENE E. ROUSE
Deputy Attorney General
Attorneys for Complainant

LA2013509957; 52104920.doc

Exhibit A

First Amended Accusation No. 4866

1 KAMALA D. HARRIS
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2 LINDA L. SUN
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Attorneys for Complainant

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17 **18366**
18
19 Respondent.

Case No. 4866
FIRST AMENDED ACCUSATION

20
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 (Board), Department of Consumer Affairs.
25 2. On or about September 9, 2004, the Board issued Wholesaler Permit Number WLS
26 4481 (Permit) to Green's Pharmaceuticals (Respondent Green's). The Wholesaler Permit was in
27 full force and effect at all times relevant to the charges brought herein and will expire on
28 September 1, 2016, unless renewed.

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9. Section 4059, "Prescription dispensing requirements", states, in relevant part, that:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . .

(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . .

10. Section 4059.5, "Restrictions on ordering and receiving delivery of dangerous drugs or dangerous devices", states, in relevant part, that:

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative shall sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to a person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

11. Section 4160, subdivision (d), provides that the designated representative shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers.

12. Section 4163, subdivision (a), "Unauthorized persons", provides that: "A manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous drug or dangerous device to an unauthorized person."

13. Section 4169, "Prohibited acts involving dangerous drugs", sets forth, in relevant part, that:

(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.

14. Section 4301, "Unprofessional conduct", states, in pertinent part, as follows:

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:

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(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

...

(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.

...

(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.

15. Health and Safety Code section 11171, "**Prohibited prescription or administration in absence of compliance**", provides that "no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division."

16. Health and Safety Code section 11153.5, "**Furnishing controlled substances for other than medical purposes**", states as follows:

(a) No wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, shall furnish controlled substances for other than legitimate medical purposes.

(b) Anyone who violates this section knowing, or having a conscious disregard for the fact, that the controlled substances are for other than a legitimate medical purpose shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both that fine and imprisonment.

(c) Factors to be considered in determining whether a wholesaler or manufacturer, or agent or employee of a wholesaler or manufacturer, furnished controlled substances knowing or having a conscious disregard for the fact that the controlled substances are for other than legitimate medical purposes shall include, but not be limited to, whether the use of controlled substances was for purposes of increasing athletic ability or performance, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes the product.

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1 COST RECOVERY

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

6 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

7 18. "Promethazine with Codeine" is a dangerous drug, and a Schedule V controlled
8 substance, as designated by Health & Safety Code section 11058 (c)(1). Promethazine with
9 codeine is a prescription cough syrup.

10 FACTS SUPPORTING CAUSES FOR DISCIPLINE

11 19. On various dates in June 2008, the Drug Enforcement Agency (DEA) and the Internal
12 Revenue Service conducted an investigation and surveillance at Green's in Long Beach and on
13 Lucita Uy. At all times relevant to this matter, Uy was not licensed with the Board and was not
14 an owner/partner/corporate member of the wholesalers or pharmacies which are at issue in this
15 Accusation.

16 20. On June 17, 2008, an unidentified male was observed by the DEA making multiple
17 trips to and from Green's, and loading boxes consistent with packaging for promethazine with
18 codeine onto a vehicle. Shortly thereafter, Uy was observed getting into the unidentified male's
19 vehicle. The vehicle departed and was then observed around one hour later entering the secured
20 gate at Arcadia/210 Self Storage. The unidentified male unloaded the boxes from his vehicle and
21 placed them into storage unit A1020, in the presence of Uy. A DEA agent was able to see into
22 the unit and estimated there were at least 300 boxes in the unit, consistent with the packaging for
23 promethazine with codeine.

24 21. On or about June 18, 2008, Uy and two other persons were observed at the storage
25 unit, repackaging and relabeling the boxes.

26 22. On or about June 19, 2008, a van left the Arcadia storage facility. The van was
27 driven to Uy's residence and was parked in her driveway.

28 23. On or about June 20, 2008, the van departed from Uy's residence and was stopped by

1 California Highway Patrol officers, who seized 720 one-pint bottles of promethazine with
2 codeine. On or about June 20, 2008, Uy gave consent for agents to search her storage unit,
3 A1020, and 388 boxes with 12 one-pint bottles per box of promethazine with codeine were found
4 and seized from the unit.

5 24. On or about August 6, 2008, a federal search warrant was executed at Green's and
6 invoices reflecting Green's sales of promethazine with codeine to Blue Rose, Save-Rite and
7 Value Plus were seized by the DEA. The invoices showed sales of approximately 75,719 bottles
8 of promethazine with codeine by Green's to Uy, between April 2006 and July 2008.

9 25. On or about November 24, 2008, DEA Investigators determined that Uy purchased
10 promethazine with codeine from Green's and diverted this controlled substance to Houston,
11 Texas, where it was sold on the street for illegitimate drug use. During an interview by DEA
12 agents on or about November 24, 2008, Uy admitted she purchased approximately 12,000 bottles
13 of promethazine with codeine from Green's, using the DEA registrations of Blue Rose and Save-
14 Rite pharmacies, to sell them on the streets of Houston.

15 26. On an unknown date, the Board learned of a grand jury indictment in the United
16 States District Court for the Central District of California in the case entitled *United States of*
17 *America v. Lucita Uy, Lemuel Libunao, Christopher Lamont Crawford and Kendra Patrice*
18 *Manigault*, Case No. CR 11 00426. Pertinent details of the indictment include:

- 19 • Promethazine with codeine syrup, when used for a legitimate medical purpose, is a
20 controlled substance which is used to control upper respiratory conditions and
21 suppress a cough. A legal prescription is typically issued for 4-8 ounces, to be taken
22 over a short period of time.
23 • Promethazine with codeine syrup, when used as an illicit street drug, can create a
24 "high" similar to that experienced when a person uses heroin.¹

25 ¹ The cough syrup is typically used as a recreational drug in high doses and mixed with a
26 soft drink and a Jolly Rancher fruit candy. This mixture is commonly called "purple drank" (as
27 well as other names) and originated in Houston, Texas. Dangers arise in higher dosages because
28 promethazine is a depressant of the central nervous system and codeine is a respiratory
depressant. When taken in large amounts, codeine is addictive and can cause death.
(See: http://en.wikipedia.org/wiki/Purple_drink).

- 1 • Although the wholesale price for a pint of promethazine with codeine ranges from
2 \$6.95 to \$8.95, the “street value” when purchased illegally as a street drug in the
3 greater Houston, Texas area was \$300.00 to \$600.00 (\$150.00 to \$200.00 in the
4 greater Los Angeles area), during the time period relevant to this matter.
- 5 • In order to obtain a DEA registration to be able to purchase promethazine with
6 codeine, Uy acquired Plaza Pharmacy (subsequently renamed Save-Rite Pharmacy
7 (Save-Rite)), Dean Health Care Inc. dba Value Plus Pharmacy (Value Plus) and
8 Blue Rose Pharmacy (Blue Rose).
- 9 • Uy purchased promethazine with codeine from the following wholesalers: Modern
10 Medical Products Inc., FMC Distributors, and Coast Laboratories Inc. dba Green’s,
11 and then transported it to Texas via vehicles and by shipping it through a parcel
12 service to Texas.
- 13 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
14 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 15 • Crawford and Manigault obtained promethazine with codeine from Uy in Texas,
16 unlawfully distributed the syrup in Texas, and provided Uy with the proceeds from
17 the distribution.
- 18 • Green’s, Save-Rite, Value Plus and Blue Rose showed a repetitive pattern of sales of
19 promethazine with codeine.

20 27. On or about August 25, 2015, in United States District Court, Central District of
21 California, *United States v. Lucita Uy, et al.*, Case No. CR 11-426, defendant Uy pled guilty to
22 and was convicted of counts one through three of the first superseding information, for Causing a
23 Financial Institution to Fail to File a Currency Transaction Report, in violation of 31 U.S.C.
24 sections 5324(a)(1) and (d)(2). On or about February 29, 2016, Uy was sentenced to serve 24
25 months in prison and was prohibited from engaging in any business or pharmacy as a whole or
26 partial owner or employee, without the approval of her Probation Officer, among other terms and
27 conditions.

28 ///

1 28. Beginning in May 2013, the Board's investigator conducted an investigation at
2 Green's related to its sales of promethazine with codeine, between 2006 and 2008. Green's
3 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the
4 invoices for the sales of promethazine with codeine by Green's to Blue Rose, Value Plus and
5 Save-Rite which were seized by the DEA were provided to the Board's investigator. Many of
6 these invoices list "Lucy" under the "PO#".

7 29. The Board's investigation revealed that between approximately March 9, 2007
8 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
9 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
10 April 17, 2006 and July 25, 2008, Respondent Green's distributed excessive amounts of
11 approximately 73,069 pints of promethazine with codeine to Blue Rose and Save-Rite
12 pharmacies, while the initial orders for the drug consisted of 72 pints in April of 2006. Without
13 decreasing order frequency, Respondent Green's distributed as much as 720 pints for a single
14 order in March of 2007, and routinely distributed orders consisting of hundreds of pints only days
15 apart to the same pharmacy. Respondents Green's and Matthews failed to consider this increase
16 in volume as a factor in identifying that the purchase of promethazine with codeine was not for a
17 legitimate medical purpose.

18 30. Respondent Matthews was the Designated Representative-In-Charge (DRIC) of
19 Green's from approximately January 1, 2006 through July 30, 2011. Matthews informed the
20 Board's investigator during an interview that Uy walked into Green's one day and wanted to open
21 an account. Matthews indicated that Green's only allowed Uy, and no one else, to pick up the
22 promethazine with codeine, because she was the person who had opened the account. According
23 to Matthews, the majority of the time, Uy would pick up the order directly at Green's, but some
24 of her orders were also shipped.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Respondent Green's - Unlawful Transfer, Sale And/Or Delivery
of Dangerous Drugs to Unlicensed Person(s) And/Or Facility)**

27 31. Respondent Green's is subject to disciplinary action under Sections 4300 and 4301,
28 subdivisions (j) and/or (o), for violating Section 4059.5, subdivision (b), in that dangerous drugs

1 may only be transferred, sold or delivered to an entity licensed by the Board, to a manufacturer or
2 to an ultimate user or user's agent. Green's failed to deliver promethazine with codeine to a
3 licensed premise when it allowed Uy to directly purchase it. On or about June 17, 2008,
4 Respondent Green's transferred, sold and/or delivered approximately 4,656 pints of promethazine
5 with codeine to Lucita Uy, an unlicensed individual, and/or her agent, who stored them in an
6 unlicensed facility, Unit A1020 in Arcadia/210 Self Storage, the circumstances of which are more
7 fully set forth in Paragraphs 19 through 30 above, which are incorporated herein by this reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Respondent Green's - Unlawful Drug Transfers)**

10 32. Respondent Green's is subject to disciplinary action under Section 4301, subdivision
11 (j), for unlawfully furnishing dangerous drugs to unlicensed/unauthorized persons, in violation of
12 Sections 4163, subdivision (a) and 4169. From approximately June 1, 2007 to July 25, 2008,
13 sales invoices show that Green's sold approximately 25,153 pints of promethazine with codeine
14 to Blue Rose, Pharmacy Permit PHY 47605, after its license had expired on June 1, 2007. The
15 license was expired from June 1, 2007 until January 30, 2008, when SAB Pharmacy took over
16 License PHY 47605 from Blue Rose. From approximately September 6, 2006 to December 29,
17 2006, sales invoices show that Green's sold approximately 11,167 pints of promethazine with
18 codeine to Value Plus, Pharmacy Permit PHY 46801, after its license had expired on September
19 1, 2006. The circumstances are set forth in Paragraphs 19 through 30 above, which are
20 incorporated here by this reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Respondent Green's - Furnishing Controlled Substances
23 For Other Than Legitimate Medical Purposes)**

24 33. Respondent Green's is subject to disciplinary action under Section 4301, subdivision
25 (e) for furnishing controlled substances (promethazine with codeine) to unlicensed/unauthorized
26 persons, knowing or having a conscious disregard for the fact that the controlled substances
27 (promethazine with codeine) were for other than legitimate purposes, in violation of Health &
28 Safety Code section 11153.5. Green's failed to consider that the tremendous increase in the

1 volume of orders of promethazine with codeine, from 72 pints in April of 2006, to hundreds of
2 pints only days apart from the same pharmacy and as many as 720 pints in one order, which were
3 frequently being picked up directly by Uy, indicated that it was being purchased for a non-
4 medically legitimate purpose. The circumstances are set forth in Paragraphs 19 through 30
5 above, which are incorporated here by this reference.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Respondent Matthews - Unlawful Transfer, Sale And/Or Delivery
8 of Dangerous Drugs to Unlicensed Person(s))**

9 34. Respondent Matthews is subject to disciplinary action under Sections 4160,
10 subdivision (d), 4300 and 4301, subdivision (j) and/or (o), for violating Section 4059.5,
11 subdivision (b), in that dangerous drugs may only be transferred, sold or delivered to an entity
12 licensed by the Board, to a manufacturer or to an ultimate user or user's agent. While employed
13 as the DRIC of Green's, Respondent Matthews was responsible for ensuring that Green's
14 complied with all federal and state laws applicable to wholesalers, but Matthews failed to ensure
15 that Green's delivered promethazine with codeine to a licensed premise when Uy, who was not
16 licensed with the Board, was permitted to directly purchase it from Green's. On or about June 17,
17 2008, approximately 4,656 pints of promethazine with codeine were transferred, sold and/or
18 delivered by Respondent Green's and/or Matthews to Lucita Uy, an unlicensed individual, and
19 her agent and/or co-conspirator, an unidentified male, who stored them in an unlicensed facility,
20 Unit A1020 in Arcadia/210 Self Storage, the circumstances of which are more fully set forth in
21 Paragraphs 19 through 30 above, and are incorporated here by this reference.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Respondent Matthews - Unlawful Drug Transfers)**

24 35. Respondent Matthews is subject to disciplinary action under Section 4301,
25 subdivision (j), for unlawfully furnishing dangerous drugs to unlicensed/unauthorized persons, in
26 violation of Sections 4163, subdivision (a) and 4169. From approximately June 1, 2007 to July
27 25, 2008, while Matthews was employed as the DRIC of Respondent Green's, sales invoices
28 show that Green's sold approximately 25,153 pints of promethazine with codeine to Blue Rose,

1 Pharmacy Permit PHY 47605, after its license had expired on June 1, 2007. From approximately
2 September 6, 2006 to December 29, 2006, sales invoices show that Green's sold approximately
3 11,167 pints of promethazine with codeine to Value Plus, Pharmacy Permit PHY 46801, after its
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10 subdivision (d) and 4301, subdivision (e), for furnishing controlled substances (promethazine
11 with codeine) and/or allowing Respondent Green's (while she was employed as the DRIC for
12 Green's) to furnish controlled substances to unlicensed/ unauthorized persons, knowing or having
13 a conscious disregard for the fact that the controlled substances were for other than legitimate
14 purposes, in violation of Health & Safety Code section 11153.5. Matthews failed to consider that
15 the tremendous increase in the volume of orders of promethazine with codeine, from 72 pints in
16 April of 2006, to hundreds of pints only days apart from the same pharmacy, and as many as 720
17 pints in one order, which were frequently being picked up directly by Uy, indicated that it was
18 being purchased for a non-medically legitimate purpose. The circumstances are set forth in
19 Paragraphs 19 through 30 above, which are incorporated here by this reference.

20 **PRAYER**

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

23 1. Revoking or suspending Original Wholesaler Permit Number WLS 4481, issued to
24 Green's Pharmaceuticals;

25 2. Revoking or suspending Original Certificate No. EXC 18366, issued to Hilda A.
26 Matthews to act as a designated representative;

27 ///

28 ///

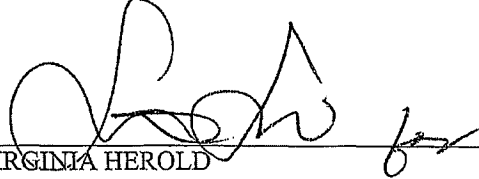
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3. Ordering Green's and Hilda A. Matthews to pay the Board of Pharmacy the reasonable costs of its investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED:

May 11, 2016



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

LA2013509957

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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4866

11 **GREEN'S PHARMACEUTICALS**
12 521 W. 17th Street
13 Long Beach, CA 90813
14 **Original Wholesaler Permit No. WLS 4481**

A C C U S A T I O N

15 and

16 **HILDA A. MATTHEWS**
17 5381 Pine Avenue
Chino Hills, CA 91709
18 **Designated Representative License No. EXC**
18366

19 Respondent.

20
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 (Board), Department of Consumer Affairs.

25 2. On or about September 9, 2004, the Board issued Wholesaler Permit Number WLS
26 4481 (Permit) to Green's Pharmaceuticals (Respondent Green's). The Wholesaler Permit was in
27 full force and effect at all times relevant to the charges brought herein and will expire on
28 September 1, 2015, unless renewed.

1 (b) This section does not apply to the furnishing of any dangerous drug or
2 dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . .

4 10. Section 4059.5, "**Restrictions on ordering and receiving delivery of dangerous
5 drugs or dangerous devices**", states, in relevant part, that:

6 (a) Except as otherwise provided in this chapter, dangerous drugs or
7 dangerous devices may only be ordered by an entity licensed by the board and shall
8 be delivered to the licensed premises and signed for and received by a pharmacist.
9 Where a licensee is permitted to operate through a designated representative, the
10 designated representative shall sign for and receive the delivery.

11 (b) A dangerous drug or dangerous device transferred, sold, or delivered
12 to a person within this state shall be transferred, sold, or delivered only to an entity
13 licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's
14 agent.

15 11. Section 4160, subdivision (d), provides that the designated representative shall be
16 responsible for the wholesaler's compliance with state and federal laws governing wholesalers.

17 12. Section 4163, subdivision (a), "**Unauthorized persons**", provides that: "A
18 manufacturer, wholesaler, repackager, or pharmacy may not furnish a dangerous drug or
19 dangerous device to an unauthorized person."

20 13. Section 4169, "**Prohibited acts involving dangerous drugs**", sets forth, in
21 relevant part, that:

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

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

26 14. Section 4301, "**Unprofessional conduct**", states, in pertinent part, as follows:

27 The board shall take action against any holder of a license who is guilty
28 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:

...

(e) The clearly excessive furnishing of controlled substances in violation
of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be
considered in determining whether the furnishing of controlled substances is clearly
excessive shall include, but not be limited to, the amount of controlled substances
furnished, the previous ordering pattern of the customer (including size and frequency
of orders), the type and size of the customer, and where and to whom the customer
distributes its product.

1
2 (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.

3
4 (o) Violating or attempting to violate, directly or indirectly, or assisting in
5 or abetting the violation of or conspiring to violate any provision or term of this
6 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.

7 15. Health and Safety Code section 11171, "**Prohibited prescription or administration**
8 **in absence of compliance**", provides that "no person shall prescribe, administer, or furnish a
9 controlled substance except under the conditions and in the manner provided by this division."

10 16. Health and Safety Code section 11153.5, "**Furnishing controlled substances for**
11 **other than medical purposes**", states as follows:

12 (a) No wholesaler or manufacturer, or agent or employee of a wholesaler
13 or manufacturer, shall furnish controlled substances for other than legitimate medical
purposes.

14 (b) Anyone who violates this section knowing, or having a conscious
15 disregard for the fact, that the controlled substances are for other than a legitimate
16 medical purpose shall be punishable by imprisonment pursuant to subdivision (h) of
Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a
fine not exceeding twenty thousand dollars (\$20,000), or by both that fine and
imprisonment.

17 (c) Factors to be considered in determining whether a wholesaler or
18 manufacturer, or agent or employee of a wholesaler or manufacturer, furnished
19 controlled substances knowing or having a conscious disregard for the fact that the
20 controlled substances are for other than legitimate medical purposes shall include, but
21 not be limited to, whether the use of controlled substances was for purposes of
22 increasing athletic ability or performance, the amount of controlled substances
furnished, the previous ordering pattern of the customer (including size and frequency
of orders), the type and size of the customer, and where and to whom the customer
distributes the product.

23 COST RECOVERY

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

28 ///

1 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE**

2 18. “Promethazine with Codeine” is a dangerous drug, and a Schedule V controlled
3 substance, as designated by Health & Safety Code section 11058 (c)(1). Promethazine with
4 codeine is a prescription cough syrup.

5 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

6 19. On various dates in June 2008, the Drug Enforcement Agency (DEA) and the Internal
7 Revenue Service conducted an investigation and surveillance at Green’s in Long Beach and on
8 Lucita Uy. At all times relevant to this matter, Uy was not licensed with the Board and was not
9 an owner/partner/corporate member of the wholesalers or pharmacies which are at issue in this
10 Accusation.

11 20. On June 17, 2008, an unidentified male was observed by the DEA making multiple
12 trips to and from Green’s, and loading boxes consistent with packaging for promethazine with
13 codeine onto a vehicle. Shortly thereafter, Uy was observed getting into the unidentified male’s
14 vehicle. The vehicle departed and was then observed around one hour later entering the secured
15 gate at Arcadia/210 Self Storage. The unidentified male unloaded the boxes from his vehicle and
16 placed them into storage unit A1020, in the presence of Uy. A DEA agent was able to see into
17 the unit and estimated there were at least 300 boxes in the unit, consistent with the packaging for
18 promethazine with codeine.

19 21. On or about June 18, 2008, Uy and two other persons were observed at the storage
20 unit, repackaging and relabeling the boxes.

21 22. On or about June 19, 2008, a van left the Arcadia storage facility. The van was
22 driven to Uy’s residence and was parked in her driveway.

23 23. On or about June 20, 2008, the van departed from Uy’s residence and was stopped by
24 California Highway Patrol officers, who seized 720 one-pint bottles of promethazine with
25 codeine. On or about June 20, 2008, Uy gave consent for agents to search her storage unit,
26 A1020, and 388 boxes with 12 one-pint bottles per box of promethazine with codeine were found
27 and seized from the unit.

28 ///

1 24. On or about August 6, 2008, a federal search warrant was executed at Green's and
2 invoices reflecting Green's sales of promethazine with codeine to Blue Rose, Save-Rite and
3 Value Plus were seized by the DEA. The invoices showed sales of approximately 75,719 bottles
4 of promethazine with codeine by Green's to Uy, between April 2006 and July 2008.

5 25. On or about November 24, 2008, DEA Investigators determined that Uy purchased
6 promethazine with codeine from Green's and diverted this controlled substance to Houston,
7 Texas, where it was sold on the street for illegitimate drug use. During an interview by DEA
8 agents on or about November 24, 2008, Uy admitted she purchased approximately 12,000 bottles
9 of promethazine with codeine from Green's, using the DEA registrations of Blue Rose and Save-
10 Rite pharmacies, to sell them on the streets of Houston.

11 26. On an unknown date, the Board learned of a grand jury indictment in the United
12 States District Court for the Central District of California in the case entitled *United States of*
13 *America v. Lucita Uy, Lemuel Libunao, Christopher Lamont Crawford and Kendra Patrice*
14 *Manigault*, Case No. CR 11 00426. Pertinent details of the indictment include:

- 15 • Promethazine with codeine syrup, when used for a legitimate medical purpose, is a
16 controlled substance which is used to control upper respiratory conditions and
17 suppress a cough. A legal prescription is typically issued for 4-8 ounces, to be taken
18 over a short period of time.
- 19 • Promethazine with codeine syrup, when used as an illicit street drug, can create a
20 "high" similar to that experienced when a person uses heroin.¹
- 21 • Although the wholesale price for a pint of promethazine with codeine ranges from
22 \$6.95 to \$8.95, the "street value" when purchased illegally as a street drug in the
23 greater Houston, Texas area was \$300.00 to \$600.00 (\$150.00 to \$200.00 in the
24 greater Los Angeles area), during the time period relevant to this matter.

25 ¹ The cough syrup is typically used as a recreational drug in high doses and mixed with a
26 soft drink and a Jolly Rancher fruit candy. This mixture is commonly called "purple drank" (as
27 well as other names) and originated in Houston, Texas. Dangers arise in higher dosages because
28 promethazine is a depressant of the central nervous system and codeine is a respiratory
depressant. When taken in large amounts, codeine is addictive and can cause death.
(See: http://en.wikipedia.org/wiki/Purple_drink).

- 1 • In order to obtain a DEA registration to be able to purchase promethazine with
2 codeine, Uy acquired Plaza Pharmacy (subsequently renamed Save-Rite Pharmacy
3 (Save-Rite)), Dean Health Care Inc. dba Value Plus Pharmacy (Value Plus) and
4 Blue Rose Pharmacy (Blue Rose).
- 5 • Uy purchased promethazine with codeine from the following wholesalers: Modern
6 Medical Products Inc., FMC Distributors, and Coast Laboratories Inc. dba Green's,
7 and then transported it to Texas via vehicles and by shipping it through a parcel
8 service to Texas.
- 9 • Through July 2008, Uy spent more than \$1.1 million to purchase in excess of 97,000
10 pints of promethazine with codeine, which were distributed unlawfully in Houston.
- 11 • Crawford and Manigault obtained promethazine with codeine from Uy in Texas,
12 unlawfully distributed the syrup in Texas, and provided Uy with the proceeds from
13 the distribution.
- 14 • Green's, Save-Rite, Value Plus and Blue Rose showed a repetitive pattern of sales of
15 promethazine with codeine.

16 27. U.S.D.C., Central District of California Case No. CR 11 00426 is still pending
17 against Uy, who has been charged with conspiracy to launder money; conspiracy to structure
18 financial transactions; and two counts of criminal forfeiture. Defendant Crawford pled guilty to
19 money laundering and admitted he was part of a criminal conspiracy from an unknown date until
20 August 22, 2008, to engage in financial transactions from proceeds of felonious drug trafficking.
21 The factual basis for Crawford's plea agreement states as follows: The object of the conspiracy
22 was to unlawfully distribute promethazine with codeine and conceal the proceeds from the sale.
23 Uy owned and operated several pharmacies in the Los Angeles area and used their licenses to
24 purchase large quantities of promethazine with codeine. Uy hired drivers to ship approximately
25 720 bottles (one pint per bottle) per shipment to Texas and received between \$50 and \$100 per
26 bottle.

27 28. Beginning in May 2013, the Board's investigator conducted an investigation at
28 Green's related to its sales of promethazine with codeine, between 2006 and 2008. Green's

1 produced purchase orders and a perpetual inventory of promethazine with codeine. Copies of the
2 invoices for the sales of promethazine with codeine by Green's to Blue Rose, Value Plus and
3 Save-Rite which were seized by the DEA were provided to the Board's investigator. Many of
4 these invoices list "Lucy" under the "PO#".

5 29. The Board's investigation revealed that between approximately March 9, 2007
6 through March 16, 2007, Green's sold as much as 1,308 pints of promethazine with codeine
7 within one week to Save-Rite, amounts which are beyond excessive. Between approximately
8 April 17, 2006 and July 25, 2008, Respondent Green's distributed excessive amounts of
9 approximately 73,069 pints of promethazine with codeine to Blue Rose and Save-Rite
10 pharmacies, while the initial orders for the drug consisted of 72 pints in April of 2006. Without
11 decreasing order frequency, Respondent Green's distributed as much as 720 pints for a single
12 order in March of 2007, and routinely distributed orders consisting of hundreds of pints only days
13 apart to the same pharmacy. Respondents Green's and Matthews failed to consider this increase
14 in volume as a factor in identifying that the purchase of promethazine with codeine was not for a
15 legitimate medical purpose.

16 30. Respondent Matthews was the Designated Representative-In-Charge (DRIC) of
17 Green's from approximately January 1, 2006 through July 30, 2011. Matthews informed the
18 Board's investigator during an interview that Uy walked into Green's one day and wanted to open
19 an account. Matthews indicated that Green's only allowed Uy, and no one else, to pick up the
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3 with codeine to Lucita Uy, an unlicensed individual, and/or her agent, who stored them in an
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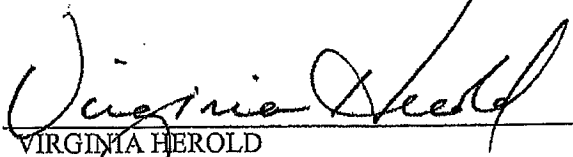
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- 23 2. Revoking or suspending Original Certificate No. EXC 18366, issued to Hilda A.
24 Matthews to act as a designated representative;
- 25 3. Ordering Green's and Hilda A. Matthews to pay the Board of Pharmacy the
26 reasonable costs of its investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3; and

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

DATED: 2/10/15



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

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