

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

In the Matter of the Amended Accusation Against:

**SAVE MART SUPERMARKET #98,
Pharmacy Permit No. PHY 55306,
Temporary Pharmacy License No. PHY 58486;**

**SAVE MART SUPERMARKET #651,
Pharmacy Permit No. PHY 55359,
Temporary Pharmacy License No. PHY 58502;**

and

**SAVE MART SUPERMARKET #52,
Pharmacy Permit No. PHY 55317,
Temporary Pharmacy License No. PHY 58468,**

Respondents.

Agency Case No. 7041

OAH No. 2021090265

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 October 5, 2022.

It is so ORDERED on September 6, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 ANDREW M. STEINHEIMER
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
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7 *Attorneys for Complainant*

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

12 In the Matter of the Amended Accusation
13 Against:

Case No. 7041

OAH No. 2021090265

14 **SAVE MART SUPERMARKET #98**
15 **1835 East Herndon Ave.**
Clovis, CA 93611

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 **Pharmacy Permit No. PHY 55306;**
17 **Temporary Pharmacy License Number**
PHY 58486,

18 **SAVE MART SUPERMARKET #651**
19 **5750 N. First St.**
Fresno, CA 93710

20 **Pharmacy Permit No. PHY 55359;**
21 **Temporary Pharmacy License Number**
PHY 58502,

22 **and**

23 **SAVE MART SUPERMARKET #52**
24 **2179 Shaw Ave.**
Clovis, CA 93611

25 **Pharmacy Permit No. PHY 55317;**
26 **Temporary Pharmacy License Number**
PHY 58468

27 Respondents.
28

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

3 **PARTIES**

4 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
5 (Board). She brought this action solely in her official capacity and is represented in this matter by
6 Rob Bonta, Attorney General of the State of California, by Anahita S. Crawford, Deputy Attorney
7 General.

8 2. On or about December 15, 2016, the Board issued Pharmacy Permit Number PHY
9 55306 to Save Mart Supermarket #98 (Respondent Save Mart #98). The Pharmacy Permit was in
10 full force and effect at all times relevant to the charges brought herein and will expire on
11 December 1, 2022, unless renewed. On or about March 28, 2022, the Board issued Temporary
12 Pharmacy License Number PHY 58486 to Respondent Save Mart #98, replacing Pharmacy
13 Permit Number PHY 55306. This Temporary Pharmacy License Number will expire on
14 September 15, 2022, unless renewed or a permanent pharmacy license is issued.

15 3. On or about December 15, 2016, the Board issued Pharmacy Permit Number PHY
16 55359 to Save Mart Supermarket #651 (Respondent Save Mart #651). The Pharmacy Permit was
17 in full force and effect at all times relevant to the charges brought herein and will expire on
18 December 1, 2022, unless renewed. On or about March 28, 2022, the Board issued Temporary
19 Pharmacy License Number PHY 58502 to Respondent Save Mart #651, replacing Pharmacy
20 Permit Number PHY 55359. This Temporary Pharmacy License Number will expire on
21 September 15, 2022, unless renewed or a permanent pharmacy license is issued.

22 4. On or about December 15, 2016, the Board issued Pharmacy Permit Number PHY
23 55317 to Save Mart Supermarket #52 (Respondent Save Mark #52). The Pharmacy Permit was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 December 1, 2022, unless renewed. On or about March 28, 2022, the Board issued Temporary
26 Pharmacy License Number PHY 58468 to Respondent Save Mart #52, replacing Pharmacy
27 Permit Number PHY 55317. This Temporary Pharmacy License Number will expire on
28 September 15, 2022, unless renewed or a permanent pharmacy license is issued.

1 **JURISDICTION**

2 5. Amended Accusation No. 7041 was filed before the Board, and is currently pending
3 against Respondents. The Amended Accusation and all other statutorily required documents were
4 properly served on Respondents on June 2, 2022. Respondents timely filed their Notice of
5 Defense contesting the Accusation.

6 6. A copy of Amended Accusation No. 7041 is attached as exhibit A and incorporated
7 herein by reference.

8 **ADVISEMENT AND WAIVERS**

9 7. Respondents have carefully read, fully discussed with counsel, and understands the
10 charges and allegations in Amended Accusation No. 7041. Respondents have also carefully read,
11 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
12 Disciplinary Order.

13 8. Respondents are fully aware of their legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
15 the witnesses against him; the right to present evidence and to testify on their own behalf; the
16 right to the issuance of subpoenas to compel the attendance of witnesses and the production of
17 documents; the right to reconsideration and court review of an adverse decision; and all other
18 rights accorded by the California Administrative Procedure Act and other applicable laws.

19 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
20 every right set forth above.

21 **CULPABILITY**

22 10. Respondents admit the truth of each and every charge and allegation in Amended
23 Accusation No. 7041.

24 11. Respondents agree that their Pharmacy License is subject to discipline and they agree
25 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

26 **CONTINGENCY**

27 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
28 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may

1 communicate directly with the Board regarding this stipulation and settlement, without notice to
2 or participation by Respondents or their counsel. By signing the stipulation, Respondents
3 understand and agree that they may not withdraw their agreement or seek to rescind the
4 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
5 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
6 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
7 the parties, and the Board shall not be disqualified from further action by having considered this
8 matter.

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

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

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

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 55306 and Temporary
23 Pharmacy License Number PHY58486 issued to Respondent Save Mart Supermarket #98,
24 Pharmacy Permit No. PHY 55359 and Temporary Pharmacy License Number PHY 58502 issued
25 to Respondent Save Mart Supermarket #651, and Pharmacy Permit No. PHY 55317 and
26 Temporary Pharmacy License Number PHY 58468 issued to Respondent Save Mart Supermarket
27 #52, are revoked. However, the revocations are stayed and Respondents are placed on probation
28 for three (3) years on the following terms and conditions:

1 **1. Definition: Respondents**

2 For the purposes of these terms and conditions, “respondents” shall refer to Save Mart
3 Supermarket #98, Pharmacy Permit No. PHY 55306 and Temporary Pharmacy License Number
4 PHY58486, Save Mart Supermarket #651, Pharmacy Permit No. PHY 55359 and Temporary
5 Pharmacy License Number PHY 58502, and Save Mart Supermarket #52, Pharmacy Permit No.
6 PHY 55317 and Temporary Pharmacy License Number PHY 58468. All terms and conditions
7 stated herein shall bind and be applicable to the licensed premises and to all owners, managers,
8 officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes
9 of compliance with any term or condition, any report, submission, filing, payment, or appearance
10 required to be made by respondents to or before the board or its designee shall be made by an
11 owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

12 **2. Obey All Laws**

13 Respondents shall obey all state and federal laws and regulations.

14 Respondents shall report any of the following occurrences to the board, in writing, within
15 seventy- two (72) hours of such occurrence:

- 16 • an arrest or issuance of a criminal complaint for violation of any provision of the
17 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
18 substances laws;
- 19 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal
20 proceeding to any criminal complaint, information or indictment;
- 21 • a conviction of any crime; or
- 22 • discipline, citation, or other administrative action filed by any state or federal agency
23 which involves respondents’ pharmacy permit or which is related to the practice of
24 pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging
25 for any dangerous drug, and/or dangerous device or controlled substance.

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

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1 **3. Report to the Board**

2 Respondents shall report to the board quarterly, on a schedule as directed by the board or its
3 designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, respondents shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation. Failure to submit timely reports
6 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
7 in submission of reports as directed may be added to the total period of probation. Moreover, if
8 the final probation report is not made as directed, probation shall be automatically extended until
9 such time as the final report is made and accepted by the board.

10 **4. Interview with the Board**

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

16 **5. Cooperate with Board Staff**

17 Respondents shall timely cooperate with the board's inspection program and with the
18 board's monitoring and investigation of respondents' compliance with the terms and conditions of
19 the probation, including but not limited to: timely responses to requests for information by board
20 staff; timely compliance with directives from board staff regarding requirements of any term or
21 condition of probation; and timely completion of documentation pertaining to a term or condition
22 of probation. Failure to timely cooperate shall be considered a violation of probation.

23 **6. Reimbursement of Board Costs**

24 As a condition precedent to successful completion of probation, respondents shall pay to the
25 board its costs of investigation and prosecution in the amount of \$19,879.45. There shall be no
26 deviation from this schedule absent prior written approval by the board or its designee. Failure to
27 pay costs by the deadline(s) as directed shall be considered a violation of probation.

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1 Respondents shall be permitted to pay these costs in a payment plan approved by the board
2 or its designee, so long as full payment is completed no later than one (1) year prior to the end
3 date of probation.

4 **7. Probation Monitoring Costs**

5 Respondents shall pay any costs associated with probation monitoring as determined by the
6 board each and every year of probation. Such costs shall be payable to the board on a schedule as
7 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
8 be considered a violation of probation.

9 **8. Status of License**

10 Respondents shall, at all times while on probation, maintain current pharmacy permits with
11 the board. Failure to maintain current permits shall be considered a violation of probation.

12 If respondents permits expire or are cancelled by operation of law or otherwise at any time
13 during the period of probation, including any extensions thereof or otherwise, upon renewal or
14 reapplication respondents' permits shall be subject to all terms and conditions of this probation
15 not previously satisfied.

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

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

22 Respondents may not apply for any new license from the board for three (3) years from the
23 effective date of the surrender. Respondents shall meet all requirements applicable to the license
24 sought as of the date the application for that license is submitted to the board.

25 Respondents further stipulate that they shall reimburse the board for its costs of
26 investigation and prosecution prior to the acceptance of the surrender.

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1 **10. Sale or Discontinuance of Business**

2 During the period of probation, should respondents sell, trade or transfer all or part of the
3 ownership of the licensed entity, discontinue doing business under the license issued to
4 respondents, or should practice at that location be assumed by another full or partial owner,
5 person, firm, business, or entity, under the same or a different premises license number, the board
6 or its designee shall have the sole discretion to determine whether to exercise continuing
7 jurisdiction over the licensed location, under the current or new premises license number, and/or
8 carry the remaining period of probation forward to be applicable to the current or new premises
9 license number of the new owner.

10 **11. Notice to Employees**

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

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

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

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

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

4 **13. Premises Open for Business**

5 Respondents shall remain open and engaged in its ordinary business as a pharmacy in
6 California for a minimum of 120 hours per calendar month. Any month during which this
7 minimum is not met shall toll the period of probation, i.e., the period of probation shall be
8 extended by one month for each month during with this minimum is not met. During any such
9 period of tolling of probation, respondents must nonetheless comply with all terms and conditions
10 of probation, unless respondents are informed otherwise in writing by the board or its designee. If
11 respondents are not open and engaged in its ordinary business as a pharmacy for a minimum of
12 120 hours in any calendar month, for any reason (including vacation), respondents shall notify the
13 board in writing within ten (10) days of the conclusion of that calendar month. This notification
14 shall include at minimum all of the following: the date(s) and hours respondents were open; the
15 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on
16 which respondents will resume business as required. Respondents shall further notify the board in
17 writing within ten (10) days following the next calendar month during which respondents are
18 open and engaged in its ordinary business as a pharmacy in California for a minimum of 120
19 hours. Any failure to timely provide such notification(s) shall be considered a violation of
20 probation.

21 **14. Posted Notice of Probation**

22 Respondents shall prominently post a probation notice provided by the board or its designee
23 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from
24 the board or its designee. Failure to timely post such notice, or to maintain the posting during the
25 entire period of probation, shall be considered a violation of probation.

26 Respondents shall not, directly or indirectly, engage in any conduct or make any statement
27 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
28

1 member of the public, or other person(s) as to the nature of and reason for the probation of the
2 licensed entity.

3 **15. Violation of Probation**

4 If a respondents have not complied with any term or condition of probation, the board shall
5 have continuing jurisdiction over respondents, and probation shall be automatically extended,
6 until all terms and conditions have been satisfied or the board has taken other action as deemed
7 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
8 to impose the penalty that was stayed.

9 If respondents violate probation in any respect, the board, after giving respondents notice
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
11 was stayed. If a petition to revoke probation or an accusation is filed against respondents during
12 probation, the board shall have continuing jurisdiction and the period of probation shall be
13 automatically extended until the petition to revoke probation or accusation is heard and decided.

14 **16. Completion of Probation**

15 Upon written notice by the board or its designee indicating successful completion of
16 probation, respondents' licenses will be fully restored.

17 **17. Administrative Fine**

18 Respondents shall pay an administrative fine to the board in the amount of \$25,000.
19 Respondents shall have 90 days from the effective date of this Decision and Order to pay the
20 administrative fine. The fine may be paid on a payment plan approved by the board. Failure to
21 pay the administrative fine as ordered, shall be considered a violation of probation.

22 **18. Board's One-Day Training Program**

23 Within the first year of probation, all pharmacists employed at respondents' locations shall
24 enroll in the board's one-day, six (6) hour, training program, "*Prescription Drug Abuse and*
25 *Diversion Prevention Training.*" Respondents shall provide proof of enrollment within five (5)
26 days of enrollment. Within five (5) days of completion, Respondents shall submit a copy of the
27 certificates of completion to the board. Failure to ensure timely enroll of staff pharmacists in the
28 training program, to initiate the training program during the first year of probation, to successfully

1 complete it before the end of the second year of probation, or to timely submit proof of
2 completion to the board, shall be considered a violation of probation.

3 **ACCEPTANCE**

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, John Bishop. I understand the stipulation and the effect it will have
6 on my pharmacy permit. I enter into this Stipulated Settlement and Disciplinary Order
7 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
8 Board of Pharmacy.

9
10 DATED: _____

Representative
SAVE MART SUPERMARKET #98, #651, #52
Respondents

13
14 I have read and fully discussed with Respondents the terms and conditions and other
15 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
16 and content.

17
18 DATED: _____

JOHN BISHOP
Attorney for Respondents

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complete it before the end of the second year of probation, or to timely submit proof of completion to the board, shall be considered a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John Bishop. I understand the stipulation and the effect it will have on my pharmacy 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: 7/18/2022

DocuSigned by:

Stephanie Wu

Representative

SAVE MART SUPERMARKET #98, #651, #52
Respondents

I have read and fully discussed with Respondents the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/18/2022

JB
JOHN BISHOP

Attorney for Respondents

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ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
ANDREW M. STEINHEIMER
Supervising Deputy Attorney General

ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant

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ENDORSEMENT

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

DATED: 07/18/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
ANDREW M. STEINHEIMER
Supervising Deputy Attorney General



ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7041

1 ROB BONTA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 ANDREW M. STEINHEIMER
Deputy Attorney General
4 State Bar No. 200524
1300 I Street, Suite 125
5 P.O. Box 944255
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6 Telephone: (916) 210-7892
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 7041

12 **ROGELIO SANTIAGO**
252 N. Cypress Ave.
13 **Clovis, CA 93611**
Pharmacy Technician License No. 67617,

FIRST AMENDED ACCUSATION

14 **SAVE MART SUPERMARKET #98**
1835 East Herndon Ave.
15 **Clovis, CA 93611**

16 **Pharmacy Permit No. PHY 55306;**
17 **Temporary Pharmacy License Number**
PHY 58486,

18 **SAVE MART SUPERMARKET #651**
5750 N. First St.
19 **Fresno, CA 93710**

20 **Pharmacy Permit No. PHY 55359;**
21 **Temporary Pharmacy License Number**
PHY 58502,

22 **and**

23 **SAVE MART SUPERMARKET #52**
2179 Shaw Ave.
24 **Clovis, CA 93611**

25 **Pharmacy Permit No. PHY 55317;**
26 **Temporary Pharmacy License Number**
PHY 58468

27 Respondents.
28

PARTIES

1
2 1. Anne Sodergren (Complainant) brings this First Amended Accusation solely in her
3 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
4 Consumer Affairs.

5 2. On or about May 25, 2006, the Board issued Pharmacy Technician License Number
6 67617 to Rogelio Santiago (Respondent Santiago). The Pharmacy Technician License was in full
7 force and effect at all times relevant to the charges brought herein and will expire on May 31,
8 2022, unless renewed.

9 3. On or about December 15, 2016, the Board issued Pharmacy Permit Number PHY
10 55306 to Save Mart Supermarket #98 (Respondent Save Mart #98). The Pharmacy Permit was in
11 full force and effect at all times relevant to the charges brought herein and will expire on
12 December 1, 2022, unless renewed. On or about March 28, 2022, the Board issued Temporary
13 Pharmacy License Number PHY 58486 to Respondent Save Mart #98, replacing Pharmacy
14 Permit Number PHY 55306. This Temporary Pharmacy License Number will expire on
15 September 15, 2022, unless renewed or a permanent pharmacy license is issued.

16 4. On or about December 15, 2016, the Board issued Pharmacy Permit Number PHY
17 55359 to Save Mart Supermarket #651 (Respondent Save Mart #651). The Pharmacy Permit was
18 in full force and effect at all times relevant to the charges brought herein and will expire on
19 December 1, 2022, unless renewed. On or about March 28, 2022, the Board issued Temporary
20 Pharmacy License Number PHY 58502 to Respondent Save Mart #651, replacing Pharmacy
21 Permit Number PHY 55359. This Temporary Pharmacy License Number will expire on
22 September 15, 2022, unless renewed or a permanent pharmacy license is issued.

23 5. On or about December 15, 2016, the Board issued Pharmacy Permit Number PHY
24 55317 to Save Mart Supermarket #52 (Respondent Save Mark #52). The Pharmacy Permit was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 December 1, 2022, unless renewed. On or about March 28, 2022, the Board issued Temporary
27 Pharmacy License Number PHY 58468 to Respondent Save Mart #52, replacing Pharmacy
28 Permit Number PHY 55317. This Temporary Pharmacy License Number will expire on

September 15, 2022, unless renewed or a permanent pharmacy license is issued.

JURISDICTION

6. This First Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

7. Section 4300 of the Code states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

8. Section 4300.1 of the Code states:

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 a decision suspending or revoking the license.

STATUTORY PROVISIONS

9. 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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

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

...

1 (h) The administering to oneself, of any controlled substance, or the use of any
2 dangerous drug . . . to the extent or in a manner as to be dangerous or injurious to oneself, to
3 a person holding a license under this chapter, or to any other person or to the public or to the
4 extent that the use impairs the ability of the person to conduct with safety to the public the
5 practice authorized by the license.

6 ...

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

9 ...

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

15 10. Code section 4059, subdivision (a), states, in pertinent part:

16 A person may not furnish any dangerous drugs, except upon the prescription
17 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor,
18 pursuant to Section 3640.7. shall not possess any controlled substance, except that
19 furnished to a person upon the prescription of a physician, dentist, podiatrist,
20 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

21 ...

22 11. Code section 4060 states:

23 A person shall not possess any controlled substance, except that furnished to a
24 person upon the prescription of a physician, dentist, podiatrist, optometrist,
25 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
26 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
27 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
28 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6.

...

12. Code section 4081, subdivision (a), states:

All records of manufacture and of sale, acquisition, receipt, shipment, or
disposition of 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 manufacturer, wholesaler, third-party logistics provider,
pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician,
dentist, podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined
in Section 4187 , clinic, hospital, institution, or establishment holding a currently
valid and unrevoked certificate, license, permit, registration, or exemption under
Division 2 (commencing with Section 1200) of the Health and Safety Code or

1 under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
2 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

3
4 13. Health and Safety Code section 11173, subdivision (a), states:

5 No person shall obtain or attempt to obtain controlled substances, or procure or
6 attempt to procure the administration of or prescription for controlled substances, (1)
7 by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
8 material fact.

9 **REGULATORY PROVISIONS**

10 14. Title 16, California Code of Regulations section 1714, subdivision (b), states:

11 Each pharmacy licensed by the board shall maintain its facilities, space,
12 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
13 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
14 area to accommodate the safe practice of pharmacy.

15 15. Title 16, California Code of Regulations section 1718 states:

16 “Current Inventory” as used in Sections 4081 and 4332 of the Business and
17 Professions Code shall be considered to include complete accountability for all
18 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

19 **COST RECOVERY**

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

24 **DRUGS**

25 17. Phenergan with codeine is the brand name for promethazine with codeine which is
26 designated a Schedule V controlled substance by Health and Safety Code section 11058 and is a
27 dangerous drug pursuant to Code section 4022.

28 18. Adipex-P is the brand name for phentermine which is designated a Schedule IV
controlled substance by Health and Safety Code section 11057 and is a dangerous drug pursuant
to Code section 4022.

19. Xanax is the brand name for alprazolam which is designated a Schedule IV controlled
substance by Health and Safety Code section 11057 and is a dangerous drug pursuant to Code

1 section 4022.

2 20. Ativan is the brand name for lorazepam which is designated a Schedule IV controlled
3 substance by Health and Safety Code section 11057 and is a dangerous drug pursuant to Code
4 section 4022.

5 21. Ultram is the brand name for tramadol which is designated a Schedule IV controlled
6 substance by Health and Safety Code section 11057 and is a dangerous drug pursuant to Code
7 section 4022.

8 22. Ambien is the brand name for zolpidem which is designated a Schedule IV controlled
9 substance by Health and Safety Code section 11057 and is a dangerous drug pursuant to Code
10 section 4022.

11 **FACTUAL ALLEGATIONS**

12 23. On June 30, 2020 and July 10, 2020, the Board received three DEA-106 *Reports of*
13 *Theft or Loss of Controlled Substances* from Save Mart Pharmacies due to an employee stealing
14 dangerous drugs/controlled substances. The *Reports of Theft or Loss of Controlled Substances*
15 indicated that numerous drugs from three Save Mart pharmacies were missing including
16 promethazine with codeine, phentermine, alprazolam, lorazepam, tramadol, and zolpidem. The
17 losses were discovered through a periodic reconciliation of controlled substances.

18 24. Save Mart #52 reported the following drugs were lost or stolen: 5,553 ml of
19 promethazine with codeine and 3,536 tablets of phentermine 37.5 mg.

20 25. Save Mart #98 reported the following drugs were lost or stolen: 3,266 tablets of
21 alprazolam 2 mg, 975 tablets of lorazepam 1 mg, 4,136 tablets of phentermine 37.5 mg, 490
22 tablets of tramadol 50 mg, 1,088 tablets of zolpidem 10 mg, and 17,886 ml of promethazine with
23 codeine.

24 26. Save Mart #651 reported the following drugs were lost or stolen: 7,840 tablets of
25 alprazolam 2 mg, 5,900 tablets of phentermine 37.5 mg, 19,804 ml of promethazine with codeine.

26 27. Respondent Santiago was interviewed on July 6, 2020, by three employees of Save
27 Mart. During the interview, Respondent Santiago admitted that he stole tramadol, phentermine
28 and promethazine with codeine. Respondent Santiago admitted to pouring the pills in his pocket,

discarding the bottles and shredding the invoices for the drugs he took. Respondent Santiago said that he stole the drugs to help him deal with alcohol and anxiety issues. This interview was documented in a Save Mart Internal Theft Case Report prepared by Save Mart Loss Prevention Manager JC and confirmed by a summary of the interview prepared by Store Manager GB and notes prepared by Loss Prevention Manager BR.

RESPONDENT ROGELIO SANTIAGO

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Moral turpitude, dishonesty, fraud, deceit or corruption)

28. Respondent Santiago is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (f), in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when he unlawfully procured and possessed controlled substances taken from his employer, including but not limited to tramadol, phentermine and promethazine with codeine as described above in paragraphs 23 through 27.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Unlawfully obtaining controlled substances)

29. Respondent Santiago is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivisions (j) and (o), in that Respondent Santiago violated Health and Safety Code section 11173, subdivision (a), by unlawfully obtaining controlled substances, including but not limited to, tramadol, phentermine and promethazine with codeine as described in paragraphs 23 through 27.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional conduct – Possession of controlled substances)

30. Respondent Santiago is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivisions (j) and (o), in that Respondent Santiago violated Code section 4060 by unlawfully possessing controlled substances, including but not limited to, tramadol, phentermine and promethazine with codeine as described in paragraphs 23 through 27.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional conduct – Furnishing drugs without valid prescription)

3 31. Respondent Santiago is subject to disciplinary action for unprofessional conduct
4 pursuant to Code section 4301, subdivision (j) and (o), in that Respondent Santiago violated Code
5 section 4059 by unlawfully furnishing dangerous drugs to himself without a valid prescription.
6 Respondent Santiago furnished tramadol, phentermine and promethazine with codeine to himself
7 without a prescription as described in paragraphs 23 through 27.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Unprofessional conduct – Self-administering controlled substance)

10 32. Respondent committed unprofessional conduct under Code section 4301, subdivision
11 (h), by unlawfully self-administering controlled substances, including but not limited to,
12 tramadol, phentermine and promethazine with codeine as described above in paragraphs 23
13 through 27.

14 **RESPONDENT SAVE MART #98**

15 **SIXTH CAUSE FOR DISCIPLINE**

16 (Unprofessional conduct – Failure to keep current inventory)

17 33. Respondent Save Mart #98 is subject to disciplinary action under Code section 4301,
18 subdivisions (j) and (o), in that Respondent Save Mart #98 violated Code section 4081,
19 subdivision (a), and Title 16, California Code of Regulations section 1718, and failed to keep a
20 current inventory when Respondent Santiago diverted controlled substances while working at
21 Save Mart Pharmacy #98, as described above in paragraphs 23, 25 and 27.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 (Unprofessional conduct – Failure to secure drugs)

24 34. Respondent Save Mart #98 is subject to disciplinary action under Code section 4301,
25 subdivisions (j) and (o), in that Respondent Save Mart #98 violated Title 16, California Code of
26 Regulations section 1714, subdivision (b), and failed to maintain its facilities so that drugs are
27 properly secured and distributed when Respondent Santiago diverted controlled substances while
28 working at Save Mart Pharmacy #98, as described above in paragraphs 23, 25 and 27.

1 **RESPONDENT SAVE MART #651**

2 **EIGHTH CAUSE FOR DISCIPLINE**

3 (Unprofessional conduct – Failure to keep current inventory)

4 35. Respondent Save Mart #651 is subject to disciplinary action under Code section
5 4301, subdivisions (j) and (o), in that Respondent Save Mart #651 violated Code section 4081,
6 subdivision (a), and Title 16, California Code of Regulations section 1718, and failed to keep
7 current inventory when Respondent Santiago diverted controlled substances while working at
8 Save Mart Pharmacy #651, as described above in paragraphs 2, 26 and 27.

9 **NINTH CAUSE FOR DISCIPLINE**

10 (Unprofessional conduct – Failure to secure drugs)

11 36. Respondent Save Mart #651 is subject to disciplinary action under Code section
12 4301, subdivisions (j) and (o), in that Respondent Save Mart #651 violated Title 16, California
13 Code of Regulations section 1714, subdivision (b), and failed to maintain its facilities so that
14 drugs are properly secured and distributed when Respondent Santiago diverted controlled
15 substances while working at Save Mart Pharmacy #651, as described above in paragraphs 23, 26
16 and 27.

17 **RESPONDENT SAVE MART #52**

18 **TENTH CAUSE FOR DISCIPLINE**

19 (Unprofessional conduct – Failure to keep current inventory)

20 37. Respondent Save Mart #52 is subject to disciplinary action under Code section 4301,
21 subdivision (j) and (o), in that Respondent Save Mart #52 violated Code section 4081,
22 subdivision (a), and Title 16, California Code of Regulations section 1718, and failed to keep
23 current inventory when Respondent Santiago diverted controlled substances while working at
24 Save Mart Pharmacy #52, as described above in paragraphs 23, 24 and 27.

25 **ELEVENTH CAUSE FOR DISCIPLINE**

26 (Unprofessional conduct – Failure to secure drugs)

27 38. Respondent Save Mart #52 is subject to disciplinary action under Code section 4301,
28 subdivisions (j) and (o), in that Respondent Save Mart #52 violated Title 16, California Code of

Regulations section 1714, subdivision (b), and failed to maintain its facilities so that drugs are properly secured and distributed when Respondent Santiago diverted controlled substances while working at Save Mart Pharmacy #52, as described above in paragraphs 23, 24 and 27.

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:

1. Revoking or suspending Pharmacy Technician License Number 67617, issued to Rogelio Santiago;
2. Revoking or suspending Pharmacy Permit Number PHY 55306, and/or Temporary Pharmacy License Number PHY 58486, issued to Save Mart Supermarket #98;
3. Revoking or suspending Pharmacy Permit Number PHY 55359, and/or Temporary Pharmacy License Number PHY 58502, issued to Save Mart Supermarket #651;
4. Revoking or suspending Pharmacy Permit Number PHY 55317, and/or Temporary Pharmacy License Number PHY 58468, issued to Save Mart Supermarket #52;
5. Ordering Rogelio Santiago, Save Mart Supermarket #98, Save Mart Supermarket #651, and Save Mart Supermarket #52 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: 5/31/2022

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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