

Decree Library at the address given above.

**Maureen M. Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF JUSTICE

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Green Seal, Inc.

Notice is hereby given that, on June 28, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Green Seal, Inc. (“Green Seal”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Green Seal has issued a new standard for personal care and cosmetic products.

On January 26, 2011, Green Seal filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2011 (76 FR 12370).

**Patricia A. Brink,**

*Director of Civil Enforcement Antitrust Division.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 07-43]

#### Terese, Inc., D/B/A Peach Orchard Drugs; Admonition of Registrant

On July 25, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Terese, Inc., d/b/a/Peach Orchard Drugs (Respondent), of Augusta, Georgia. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration, which authorizes it to dispense controlled substances as a retail pharmacy, and the denial of any pending applications to renew or

modify its registration, on the ground that its “continued registration is inconsistent with the public interest.” ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Order specifically alleged that Ms. Terese Fordham, the president of Terese, Inc., had applied for and received a DEA Certificate of Registration as a retail pharmacy. *Id.* The Order alleged that Ms. Fordham was married to John Duncan Fordham, who was the pharmacist-in-charge and owner of Duncan Drugs, which had been located at the same address as Respondent. *Id.* The Order further alleged that on May 5, 2005, both Mr. Fordham and Duncan Drugs were convicted of violating 18 U.S.C. 1347, and that on May 25, 2005, Mr. Fordham was “excluded from the Medicaid program.” *Id.* The Order then alleged that Mr. Fordham “violated his conditions of release by unlawfully dispensing Medicaid controlled substances prescriptions by use of another provider’s identification number,” that Fordham was sentenced to 52 months imprisonment, and that Duncan Drugs “was forfeited to the United States.” *Id.*

Next, the Show Cause Order alleged that Ms. Fordham had falsified Respondent’s application to enroll in Medicaid, and that on December 2, 2006, the Georgia Department of Community Health had denied Respondent’s Medicaid application. *Id.* at 2. The Order then alleged that at a state hearing, “Ms. Fordham and [Respondent’s] pharmacist-in-charge declined to present evidence of corporate ownership information to the State.” *Id.*

Finally, the Show Cause Order alleged that “DEA considers for purposes of the Controlled Substances Act that a retail pharmacy only operates through its officers and agents” and that “[t]he registration of a pharmacy may be revoked as the result of the unlawful activity of its owners, majority shareholder, officer, managing pharmacist or other key employee.” *Id.* (emphasis added). The Order then concluded by alleging that “[i]n this matter, the restoration of the pharmacy operations to the spouse of the prior owner/operator is not a bona fide transaction but more of a device to retain a DEA registration with no change of control or financial interest by the previous owner who had engaged in misconduct as a registrant.” *Id.*

Respondent timely requested a hearing on the allegations, ALJ Ex. 2, and the matter was placed on the docket of the Agency’s Administrative Law Judges (ALJs). Thereafter, on April 15,

2008, an ALJ conducted a hearing in Charleston, South Carolina, at which both parties called witnesses to testify and introduced documentary evidence. ALJ at 2.

On May 13, 2009, the ALJ issued her recommended decision. Therein, the ALJ rejected the Government’s principal theories that Respondent is the alter ego of Duncan Drugs and that the creation of the pharmacy is a sham transaction which was carried out to avoid the consequences of Duncan Drugs’ loss of its registration. ALJ at 20–22. While the ALJ also found that Respondent had committed three recordkeeping violations (it failed to note the date of receipt of controlled-substance orders on DEA Form 222, had failed to record an initial inventory, and had not executed a power of attorney authorizing an employee to order Schedule II controlled substances), she found Respondent’s attempt to remedy the violations to be “sincere” and that the violations “would not, standing alone, justify revoking its registration.” *Id.* at 22–24 (citing 21 CFR 1305.13(e), 1304.11(b), 1305.04, and 1305.05(a)). The ALJ also noted that there was “no evidence that there has been any diversion of controlled substances from Respondent.” *Id.* at 22. The ALJ thus recommended that Respondent’s registration “be continued, subject to the condition that Mr. Fordham shall have no involvement with Respondent in any capacity, including ownership, management, or as an employee, and shall exercise no influence or control, direct or indirect, over the operation of Respondent.” *Id.* at 27.

Neither party filed exceptions to the ALJ’s decision. Thereafter, the record was forwarded to my office for final agency action.

During the initial course of my review, I noted that the record indicated that two proceedings were then pending which appeared to be material to the allegations: the divorce proceeding filed by Ms. Fordham and Respondent’s appeal of the State’s denial of its application to enroll in Medicaid. Accordingly, I ordered that Respondent address the status of these proceedings.

In responding to my order, Respondent noted that Mrs. and Mr. Fordham had voluntarily dismissed without prejudice their claims in the divorce proceeding. Respondent further noted that the Georgia Department of Community Health was now appealing the order of the Superior Court of Richmond County which vacated the Department’s Decision.

Having considered the record as a whole, I agree with the ALJ’s conclusion that the three recordkeeping violations