

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)  
THOMAS H. CLARKE, JR. (SBN 47592)  
CHI HUNG CHAN (SBN 104289)  
DENNIS J. BYRNE (SBN 172618)  
ROPER, MAJESKI, KOHN & BENTLEY  
201 Spear Street, Suite 1000  
San Francisco, CA 94105  
Tel.: (415) 543-4800 Fax: (415) 972-6301  
ATTORNEY(S) FOR: JJULIE CHOI and KIT LAU

SPACE BELOW FOR COURT USE ONLY  
**ENDORSED  
FILED**  
San Francisco County Superior Court  
FEB 16 2006  
GORDON PARILLI, Clerk  
BY: MARY ANN MORAN  
Deputy Clerk

<b>AMENDMENT TO COMPLAINT</b>	<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO</b>	<b>CASE NUMBER CGC 05-445237</b>
-------------------------------	--	--------------------------------------

JULIE CHOI, KIT LAU AND Plaintiff Does 1 through 1000 vs. GIANTCEUTICAL INC., BIOCALTH INTERNATIONAL (S.F.) CORPORATION, JIE J. WEN (aka JACKSON WEN), and Defendant DOES 1 through 200  
Plaintiff(s) Defendant(s)


**FICTITIOUS NAME [SEC. 474 C.C.P.]**

Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designated said defendant in the complaint by the fictitious name of: **DOE 6**

and having discovered the true name of the said defendant to be: **BIOVITALE, INC.**

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

DATED: February 15, 2006

  
THOMAS H. CLARKE, JR.  
Attorney(s) for plaintiff(s)

**INCORRECT NAME [SEC. 473 (a)(1) C.C.P]**

Plaintiff(s) having designated a defendant in the complaint by the incorrect name of \_\_\_\_\_  
and having discovered the true name of the said defendant to be \_\_\_\_\_

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

\_\_\_\_\_  
Attorney(s) for plaintiff(s)

**ORDER**

Proper cause appearing, the above amendment to the complaint is allowed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

1 CASE NAME: JULIE CHOI, et al. v. GIANTCEUTICAL INC., et al.  
2 ACTION NO.: CGC 05-445237

3 PROOF OF SERVICE

4 I am a citizen of the United States. My business address is 201 Spear Street, Suite 1000,  
5 San Francisco, CA 94105. I am employed in the County of San Francisco where this service  
6 occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar  
7 with my employer's normal business practice for collection and processing of correspondence for  
8 mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with  
9 the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

10 On the date set forth below, following ordinary business practice, I served a true copy of  
11 the foregoing document(s) described as:

12 AMENDMENT TO COMPLAINT  
13 BIOVITALE, INC. NAMED AS DOE DEFENDANT 6  
14 AND EXHIBITS "A" AND "B"

15  (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be  
16 placed in the United States mail at San Francisco, California.

17 Mr. Andrew D. Castricone Esq.  
18 Gordon & Rees LLP  
19 275 Battery Street, 20th Floor  
20 San Francisco, CA 94111


21 Attorney for Biocath International  
22 (S.F.(Corp; Giantceutical Inc.; and,  
23 Jie J. Wen (aka Jackson Wen)

24 Telephone: (415) 875-3183  
25 Facsimile: (415) 262-3726

26 Email: acastricone@gordonrees.com

27  (State) I declare under penalty of perjury under the laws of the State of California  
28 that the above is true and correct.

Executed on February 16, 2006, at San Francisco, California.

  
Norma-Jean Lee

---

EXHIBIT A

SAN FRANCISCO | 333 Market Stre  
Los Angeles | Suite 3150  
New York | San Francisco, CA 94105  
Redwood City | Telephone (415) 543-4800  
San Jose | Facsimile (415) 274-6301  
www.ropers.com

L A W Y E R S  
**K M K B**  
R O P E R S M A J E S K I K O H N B E N T L E Y

Thomas H. Clarke, Jr.  
(415) 274-6387

tclarke@ropers.com

November 4, 2005

**NOTICE OF VIOLATION OF CONSUMERS LEGAL REMEDIES ACT  
AND DEMAND FOR REMEDY**  
[Sections 1780 et seq. California Civil Code]  
**VIA CERTIFIED MAIL**

Henry A. Mahlkecht, President  
Biovitale, Inc.  
29110 Laro Drive  
Agoura Hills, CA 91301

Dear Mr. Mahlkecht:

---

You are hereby notified that on or about the last three years, in carrying out the terms of one or more transactions that you entered into with our clients and all consumers who purchased your Biocalth® Calcium L-threonate® Dietary Supplement through your wholly controlled and dominated company Herb Source Enterprise, Inc., you violated the provisions of the California Consumers Legal Remedies Act (California Civil Code §§ 1750 et seq.) by alleging that your product, the Biocalth® Calcium L-threonate® Dietary Supplement, was "Made in U.S.A." (or words that conveyed a similar meaning as to the geographic origin of the Dietary Supplement), when in fact its geographic origin is not as claimed. The practice was committed in violation of the Consumers Legal Remedies Act, as proscribed by Section 1770(4) of the Civil Code .

You further violated the Consumers Legal Remedies Act by representing the Dietary Supplement as having the following characteristics, uses, and benefits when in fact the Dietary Supplement does not, in violation of Section 1770(5) of the Civil Code:

- Being in compliance with Proposition 65 (due to the absence of the required Proposition 65 warning).
- Curing or mitigating the adverse effects of lumbar pain.
- Curing or mitigating the adverse effects of night cramps.
- Curing or mitigating the adverse effects of wrist joint pain.
- Curing or mitigating the adverse effects of leg weakness.
- Curing or mitigating the adverse effects of stiff joints.
- Curing or mitigating the adverse effects of cartilage related diseases.

**THIRTY-DAY NOTICE OF VIOLATION OF CLRA**

Page 2

- Curing bone fractures and enhancing collagen production.
- Not interfering with any prescription medications.
- Improving “bone mechanics”.
- Providing a “natural way” for “bone formation and remodeling”.
- Curing or mitigating the adverse effects of sciatic nerve pain and disc hernia.
- Claiming that the Dietary Product was not available more recently in the U.S. because of the time-consuming process of the U.S. patent system.
- Boosting energy levels.
- Without more, preventing osteoporosis in post-menopausal women.

As a result of these violations, demand is hereby made that within 30 days after receipt of this notice you correct the misrepresentations made as to the origin of the Dietary Supplement, add a Proposition 65 warning to your Dietary Supplement Packaging as required by law, delete all untruthful and misleading claims made in your advertising and on your web site, and notify all customers over the last three years that you will refund their purchase price in full.

Sincerely,



Thomas H. Clarke, Jr.  
Attorneys for Ms. Julie Choi and Ms. Kit Lau

THC/njl



• Sender: Please print your name, address, and ZIP+4 in this box •

Thomas H. Clarke, Jr.  
ROPER, MAJESKI, KOHN & BENTLEY  
333 Market Street, Suite 3150  
San Francisco, CA 94105

310



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Henry A. Mahlknecht, President  
Biovitale, Inc.  
29110 Laro Drive  
Agoura Hills, CA 91301

2. Article Number  
(Transfer from service label)

7001 1940 0000 3577 7544

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 *Mara Mahlknecht*  Addressee

B. Received by (Printed Name) C. Date of Delivery  
 11/21/05

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

---

**EXHIBIT B**

SAN FRANCISCO | 333 Market Street  
Los Angeles | Suite 3150  
New York | San Francisco, CA 94105  
Redwood City | Telephone (415) 543-4800  
San Jose | Facsimile (415) 274-6301  
www.ropers.com

Thomas H. Clarke, Jr.  
(415) 274-6387



tclarke@ropers.com

November 4, 2005

**SIXTY-DAY NOTICE OF VIOLATION**

Henry A. Mahlknecht, President  
Biovitale, Inc.  
29110 Laro Drive  
Agoura Hills, CA 91301

Dear Mr. Mahlknecht:

California's Proposition 65 (which can be found at Sections 25249.6 et seq. of the Health & Safety Code) is designed to promote awareness of potential exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products or produced by industrial activities. Attached to this letter is a copy of "Proposition 65: A Summary", which has been prepared by the State of California, Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA may be contacted at 916-445-6900. OEHHA's web site pertaining to Proposition 65 may be found at: <http://www.oehha.ca.gov/prop65.html>.

Ropers, Majeski, Kohn & Bentley ("RMKB") and Ms. Julie Choi and Ms. Kit Lau ("Plaintiff") hereby give you notice that Biovital, Inc. has been, is currently, and threatens to be in violation of California Health & Safety Code § 25249.6; this sixty-day notice is sent to you in compliance with § 25249.7(d) California Health & Safety Code. Both RMKB and Plaintiffs are private enforcers of Proposition 65, as provided by California Health & Safety Code § 25249.7(d). You may contact both RMKB and Plaintiffs at the above listed address and telephone number; I am counsel for and represent Plaintiffs in this matter.

The above-referenced violations occur when California consumers purchase and ingest your Biocalth® Calcium L-threonate® Dietary Supplement ("Tablets"). The Tablets contain lead and lead compounds ("lead"), chemicals known to the State of California to cause reproductive toxicity. California residents are exposed to lead when they ingest the Tablets. This lead is then absorbed into the body through the gastrointestinal tract wherein it causes the harm noted.

Your business did not and does not provide California consumers with clear and reasonable warnings before it exposes them to lead, as required by Health & Safety Code § 25249.6. These violations have occurred every day for at least the last four years, and will continue every day until the lead is removed from the Tablets or until clear and reasonable



**SIXTY-DAY NOTICE OF VIOLATION**

Page 2

warnings are given. The Proposition 65 violations noted herein occur in each of California's 58 counties, or in such Counties as your Tablets are sold or consumed.

Sincerely,



Thomas H. Clarke, Jr.

THC/njl  
Enclosures

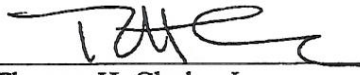
---

**CERTIFICATE OF MERIT**  
**Health & Safety Code Section 25249.7(d)**

I, Thomas H. Clarke, Jr., hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing parties.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 4, 2005

  
\_\_\_\_\_  
Thomas H. Clarke, Jr.

Ropers Majeski Kohn & Bentley  
A Professional Corporation  
San Francisco

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

### PROOF OF SERVICE

I am a citizen of the United States. My business address is 333 Market Street, Suite 3150, San Francisco, CA 94105. I am employed in the County of San Francisco where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for ailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

- Sixty-Day Notice of Violation;
- Certificate of Merit;
- The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

(BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

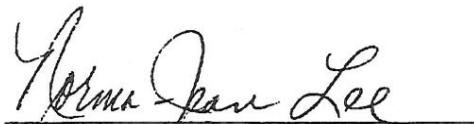
Henry A. Mahlkecht, President  
Biovitale, Inc.  
29110 Laro Drive  
Agoura Hills, CA 91301

Edward G. Weil  
Deputy Attorney General  
Office of the Attorney General  
Oakland, CA 94612-0550

Offices of the City Attorneys and  
Offices of the District Attorneys  
on the attached Service List

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 4, 2005, at San Francisco, California.

  
Norma-Jean Lee

## SERVICE LIST

Edward G. Weil Deputy Attorney General Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Office of the District Attorney County of Glenn P.O. Box 430 Willows, CA 95988-0430	Office of the District Attorney County of Monterey 240 Church Street P.O. Box 180 Salinas, CA 93902-0180	Office of the District Attorney County of Siskiyou P.O. Box 986 Yreka, CA 96097-0986
Office of the City Attorney City of Oakland 505 14 <sup>th</sup> Street, 12 <sup>th</sup> Floor Oakland, CA 94612-1406	Office of the District Attorney County of Humboldt 825 5 <sup>th</sup> Street Eureka, CA 95501-1107	Office of the District Attorney County of Napa 931 Parkway Mall P.O. Box 720 Napa, CA 94559-0720	Office of the District Attorney County of Solano 600 Union Avenue Fairfield, CA 94533-6326
Office of the City Attorney City of San Francisco City Hall, Room 206 400 Van Ness San Francisco, CA 94102-4630	Office of the District Attorney County of Imperial Courthouse Floor 2 939 West Main Street El Centro, CA 92243-2860	Office of the District Attorney County of Nevada 201 Church St., Ste. 8 Nevada City, CA 95959-2860	Office of the District Attorney County of Sonoma 600 Administration Dr., #212J Santa Rosa, CA 95403-2876
Office of the City Attorney City of Sacramento 980 9 <sup>th</sup> Street, 10 <sup>th</sup> Floor Sacramento, CA 958142736	Office of the District Attorney County of Inyo P.O. Drawer D Independence, CA 93526-0604	Office of the District Attorney County of Orange 700 Civic Center Drive West #A-200 Santa Ana, CA 92701-4405	Office of the District Attorney County of Stanislaus 1100 I Street, #200 Modesto, CA 95354-2325
Office of the City Attorney City of San Jose 151 West Mission Street San Jose, CA 95110-1710	Office of the District Attorney County of Kern 1215 Truxtun Ave., Floor 4 Bakersfield, CA 93301-4619	Office of the District Attorney County of Placer 11562 B Avenue Auburn, CA 95603-2687-2605	Office of the District Attorney County of Sutter 1160 Civic Center Blvd., #A Yuba City, CA 95993-3007
Office of the City Attorney City of Los Angeles 200 North Main Street Los Angeles, CA 90012-4110	Office of the District Attorney County of Kings 1400 West Lacey Boulevard Hanford, CA 93230-5962	Office of the District Attorney County of Plumas 520 Main Street, Room 404 Quincy, CA 95971-9116	Office of the District Attorney County of Tehama P.O. Box 519 Red Bluff, CA 96080-0519
Office of the City Attorney City of San Diego 202 C Street, Floor 3 San Diego, CA 92101-4806	Office of the District Attorney County of Lake 255 North Forbes St., #424 Lakeport, CA 95453-4756	Office of the District Attorney County of Sacramento P.O. Box 749 Sacramento, CA 95812-0749	Office of the District Attorney County of Trinity P.O. Box 310 Weaverville, CA 96093-0310
Office of the District Attorney County of Alameda 225 Fallon Street, #9 Oakland, CA 94612-4609	Office of the District Attorney County of Lassen County Administration Bldg. 707 Nevada Street Susanville, CA 96130-3912	Office of the District Attorney County of San Benito 419 4 <sup>th</sup> Street Hollister, CA 95023-3801	Office of the District Attorney County of Tulare County Civic Center 221 So. Mooney Blvd., Rm. 224 Visalia, CA 93291-4547
Office of the District Attorney County of Alpine P.O. Box 248 Markleeville, CA 96120-0248	Office of the District Attorney County of Los Angeles 18000 Criminal Court Bldg. 210 West Temple Street Los Angeles, CA 90012-3210	Office of the District Attorney County of San Bernardino 316 Mt. View Avenue San Bernardino, CA 92408-1415	Office of the District Attorney County of Tuolumne 2 South Green Street Sonora, CA 95370-4618
Office of the District Attorney County of Amador 108 Court Street, Suite 202 Jackson, CA 95642-2308	Office of the District Attorney County of San Diego 101 West Broadway, #1440 San Diego, CA 92101-8215	Office of the District Attorney County of Ventura 4245 Market Street, #205 Ventura, CA 93003-8009	Office of the District Attorney County of Butte 25 County Center Drive Oroville, CA 95965-3375

Office of the District Attorney County of Madera 209 West Yosemite Avenue Madera, CA 93637-3534	Office of the District Attorney County of San Francisco 850 Bryant Street, #322 San Francisco, CA 94103-4600	Office of the District Attorney County of San Joaquin 222 E. Weber Ave, #202 Stockton, CA 95202-2706	Office of the District Attorney County of Yolo 301 Second Street Woodland, CA 95695
Office of the District Attorney County of Calaveras Government Center 891 Mountain Ranch Road San Andreas, CA 95249-9713	Office of the District Attorney County of Marin 3501 Civil Center Dr., Rm. 130 San Rafael, CA 94903-5207	Office of the District Attorney County of San Luis Obispo County Government Center #450 San Luis Obispo, CA 93408-0002	Office of the District Attorney County of Yuba 215 5 <sup>th</sup> Street Marysville, CA 95901-5737
Office of the District Attorney County of Colusa 547 Market Street Colusa, CA 95932-2452	Office of the District Attorney County of Mariposa P.O. Box 730 Mariposa, CA 95338-0730	Office of the District Attorney County of San Mateo 400 County Center Redwood City, CA 94063-1662	Office of the District Attorney County of Contra Costa P.O. Box 670 Martinez, CA 94553-0670
Office of the District Attorney County of Mendocino 100 North State Street Ukiah, CA 95482	Office of the District Attorney County of Santa Barbara 1112 Santa Barbara Street Santa Barbara, CA 93101-2008	Office of the District Attorney County of Del Norte 450 H Street, #171 Crescent City, CA 95531-4092	Office of the District Attorney County of Merced 2222 M Street Merced, CA 95340-3729
Office of the District Attorney County of Santa Clara 70 West Hedding Street San Jose, CA 95110-1705	Office of the District Attorney County of El Dorado 515 Main Street Placerville, CA 95667-5609	Office of the District Attorney County of Modoc 204 South Court Street Alturas, CA 96101	Office of the District Attorney County of Santa Cruz 701 Ocean Street, #200 Santa Cruz, CA 95060-4011
Office of the District Attorney County of Fresno 2220 Tulare Street, #1000 Fresno, CA 93721-2107	Office of the District Attorney County of Mono P.O. Box 617 Bridgeport, CA 93517-0617	Office of the District Attorney County of Shasta 1525 Court Street Redding, CA 96001-1632	Office of the District Attorney County of Sierra P.O. Box 457 Downieville, CA 95936-0457
Office of the District Attorney County of Riverside 4075 Main Street Riverside, CA 92501-3707			