

JUL 03 2012

John A. Clarke, Executive Officer/Clerk  
By A. LaFleur-Clayton Deputy

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4 Attorney for Plaintiff  
5 As You Sow

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

BC487755

11 AS YOU SOW, a non-profit California )  
corporation, )  
12 Plaintiff, )  
13 v. )  
14 TRIVANI INTERNATIONAL LLC, DOES 1 )  
15 through 10, )  
16 Defendant(s). )

Case No. \_\_\_\_\_  
**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**  
Health & Safety Code §25249.5, *et seq.*

18 Plaintiff As You Sow brings this action in the interests of the general public and, on  
19 information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendant(s)' continuing failure to warn consumers  
22 in California that they are being exposed to progesterone, a substance known to the State of  
23 California to cause cancer. Defendant(s) manufactures, packages, distributes, markets, and/or  
24 sells in California certain health products containing progesterone (the "PRODUCT(S)")  
25 including:

26 **Provani Cream**







1 CHEMICAL without first giving a clear and reasonable warning to such individuals.

2 24. As a proximate result of acts by DEFENDANT(S), as persons in the course of  
3 doing business within the meaning of Health & Safety Code § 25249.11, individuals  
4 throughout the State of California, including in the County of Los Angeles, have been exposed  
5 to the LISTED CHEMICAL without clear and reasonable warning. The individuals subject to  
6 the violative exposures include normal and foreseeable users of the PRODUCT(S), as well as  
7 all other persons exposed to the PRODUCT(S).

8 **FIRST CAUSE OF ACTION**

9 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning  
10 the PRODUCT(S) described in PLAINTIFF's March 20, 2012 60-Day Notices of  
11 Violation)**

12 **Against DEFENDANT(S) and DOES**

13 25. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 24,  
14 inclusive, as if specifically set forth herein.

15 26. On March 20, 2012 PLAINTIFF sent a 60-Day Notice of Proposition 65  
16 violations to the requisite public enforcement agencies, and to all DEFENDANT(S)  
17 ("Notice") attached hereto as Exhibit A. The Notice was issued pursuant to, and in  
18 compliance with, the requirements of H&S Code § 25249.7(d) and the statute's implementing  
19 regulations regarding the notice of the violations to be given to certain public enforcement  
20 agencies and to the violator. The notice given included, *inter alia*, the following information:  
21 the name, address, and telephone number of the noticing individual; the name of the alleged  
22 violator; the statute violated; the approximate time period during which violations occurred;  
23 and descriptions of the violations, including the chemicals involved, the routes of toxic  
24 exposure, and the specific product or type of product causing the violations, and was issued as  
25 follows:

- 26
- a. DEFENDANT(S) and the California Attorney General were provided  
copies of the Notice by Certified Mail.
  - b. DEFENDANT(S) was provided a copy of a document entitled "The Safe  
Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A

1 Summary," which is also known as Appendix A to Title 27 of CCR  
2 §25903.

3 c. The California Attorney General was provided with a Certificate of Merit  
4 by the attorney for the noticing party, stating that there is a reasonable  
5 and meritorious case for this action, and attaching factual information  
6 sufficient to establish a basis for the certificate, including the identify of  
7 the persons consulted with and relied on by the certifier, and the facts  
8 studies, or other data reviewed by those persons, pursuant to H&S Code  
9 § 25249.7(h)(2).

10 27. The appropriate public enforcement agencies have failed to commence and  
11 diligently prosecute a cause of action under H&S Code § 25249.5, *et seq.* against  
12 DEFENDANT(S) based on the allegations herein.

13 28. By committing the acts alleged in this Complaint DEFENDANT(S) at all times  
14 relevant to this action, and continuing through the present, has violated H&S Code § 25249.6  
15 by, in the course of doing business, knowingly and intentionally exposing individuals who use  
16 or handle the PRODUCT(S) set forth in the Notices to the LISTED CHEMICAL, without first  
17 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
18 and 25249.11(f).

19 29. By the above-described acts, DEFENDANT(S) has violated H&S Code  
20 § 25249.6 and is therefore subject to an injunction ordering DEFENDANT(S) to stop violating  
21 Proposition 65, to provide warnings to all present and future customers and to provide warnings  
22 to DEFENDANT(S)' past customers who purchased or used the PRODUCT(S) without  
23 receiving a clear and reasonable warning.

24 30. An action for injunctive relief under Proposition 65 is specifically authorized by  
25 Health & Safety Code § 25249.7(a).

26 31. Continuing commission by DEFENDANT(S), of the acts alleged above will  
irreparably harm the citizens of the State of California, for which harm they have no plain,

1 speedy, or adequate remedy at law.

2 Wherefore, PLAINTIFF prays judgment against DEFENDANT(S), as set forth  
3 hereafter.

4 **SECOND CAUSE OF ACTION**  
5 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**  
6 **PRODUCT(S) described in PLAINTIFF's NOTICE)**  
7 **Against DEFENDANT(S) and DOES**

8 32. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 31,  
9 inclusive, as if specifically set forth herein.

10 33. By committing the acts alleged in this Complaint, DEFENDANT(S) at all times  
11 relevant to this action, and continuing through the present, has violated H&S Code § 25249.6 by,  
12 in the course of doing business, knowingly and intentionally exposing individuals who use or  
13 handle the PRODUCT(S) set forth in the Notice to the LISTED CHEMICAL, without first  
14 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
15 and 25249.11(f).

16 34. By the above-described acts, DEFENDANT(S) is liable, pursuant to H&S Code  
17 § 25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to a  
18 LISTED CHEMICAL from the PRODUCT(S), in an amount in excess of \$1 million.

19 Wherefore, PLAINTIFF prays judgment against DEFENDANT(S), as set forth  
20 hereafter.

21 **THE NEED FOR INJUNCTIVE RELIEF**

22 35. PLAINTIFF realleges and incorporates by this reference Paragraphs 1 through  
23 34, as if set forth below.

24 36. By committing the acts alleged in this Complaint, DEFENDANT(S) has caused  
25 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence  
26 of equitable relief, DEFENDANT(S) will continue to create a substantial risk of irreparable  
injury by continuing to cause consumers to be involuntarily and unwittingly exposed to the  
LISTED CHEMICAL through the use and/or handling of the PRODUCT(S).

1 **PRAYER FOR RELIEF**

2 Wherefore, PLAINTIFF accordingly prays for the following relief:

3 A. a preliminary and permanent injunction, pursuant to H&S Code § 25249.7(b),  
4 enjoining DEFENDANT(S), its agents, employees, assigns and all persons acting in concert or  
5 participating with DEFENDANT(S), from distributing or selling the PRODUCT(S) in  
6 California without first providing a clear and reasonable warning, within the meaning of  
7 Proposition 65, that the users and/or handlers of the PRODUCT(S) are exposed to the LISTED  
8 CHEMICAL.

9 B. an injunctive order, pursuant to H&S Code § 25249.7(b), compelling  
10 DEFENDANT(S) to identify and locate each individual who has purchased the PRODUCT(S)  
11 since March 16, 2009, and to provide a warning to such person that the use of the  
12 PRODUCT(S) will expose the user to chemicals known to cause cancer, birth defects, and  
13 other reproductive harm.

14 C. an assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b),  
15 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65;

16 D. an award to PLAINTIFF of its reasonable attorneys fees and costs of suit  
17 pursuant to California Code of Civil Procedure § 1021.5, as PLAINTIFF shall specify in  
18 further application to the Court; and,

19 E. such other and further relief as may be just and proper.  
20  
21

22  
23 DATED: 7/3, 2012

LAW OFFICE OF GIDEON KRACOV

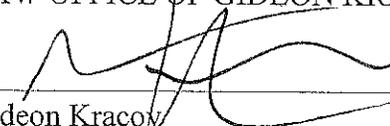
24   
25 \_\_\_\_\_  
26 Gideon Kracov  
Attorney for Plaintiff  
As You Sow

EXHIBIT A

# GIDEON KRACOV

Attorney at Law

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11th Floor  
Los Angeles, California 90017

(213) 629-2071  
Fax: (213) 623-7755

gk@gideonlaw.net  
www.gideonlaw.net

March 20, 2012

Robert Steed or Managing Partner  
Trivani International LLC  
198 S. Main Street  
Springville, Utah 84663

Re: NOTICE OF VIOLATION AGAINST TRIVANI INTERNATIONAL LLC (AYS File # 14.232.02) OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

Dear Trivani International LLC and Appropriate Public Enforcement Agencies:

As You Sow ("AYS") is a California 501(c)(3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability. AYS is located at 311 California Street, Suite 510, San Francisco, CA 94104, and tel. (415) 391-3212 c/o President Larry Fahn, who shall serve as the responsible individual within the noticing entity. AYS has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Act"), which is codified at Cal. Health & Safety Code §25249.5 *et seq.*

AYS has documented violations of Proposition 65 by Trivani International LLC ("Trivani"). This letter serves to provide AYS' notification of these violations to Trivani, located at 198 S. Main Street, Springville Utah, 84663 or (888) 874-8264. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

Information available to AYS as of the date of this letter indicates that ongoing violations have occurred every day since at least March 16, 2009, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, as Appendix A, to the copy of this letter served to Trivani.

In the course of its business, Trivani knowingly and intentionally manufactures and distributes products that have exposed and continue to expose numerous individuals within California to progesterone without first giving clear and reasonable warning to such individuals. Progesterone has been a listed carcinogen under Proposition 65 since 1988 (Title 27, CCR § 27001). Known risks include increased incidence of cancer, including breast carcinoma and tumor development.

Further risks include dangerous drug interactions.

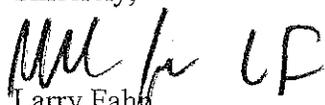
Exposure to progesterone results from the following Trivani product: *Provani Cream*.

Consumer exposure that is the subject of this notice results from the purchase, acquisition and recommended use of the listed product. Specific routes of exposure include dermal absorption directly through the scalp, skin or eyes when consumers touch, use, handle or apply the product.

AYS intends to file a private enforcement action as provided for in the Act for the alleged violations by Trivani, unless Trivani agrees in an enforceable written instrument to: (1) recall the listed products so as to eliminate further exposures to the identified chemicals; or (2) affix clear and reasonable Proposition 65 warning labels; and (3) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, AYS is interested in seeking a constructive resolution to this matter, and invites violator, should it seek early resolution of this matter, to communicate directly with AYS President Larry Fahn. Such resolution will avoid further unwarned consumer exposures, as well as resource intensive litigation.

Please direct all questions concerning this notice to AYS attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, [gk@gideonlaw.net](mailto:gk@gideonlaw.net).

Sincerely,

  
Larry Fahn  
President, As You Sow

cc:

Attachments  
Certificate of Merit  
Certificate of Service  
List of Service

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

**Re: As You Sow's Notice of Proposition 65 Violations by Trivani International LLC**

I, Gideon Kracov, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on 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 plaintiff's case can be established and that 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 California Health & Safety Code §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: March 10, 2012

  
\_\_\_\_\_  
Gideon Kracov, Attorney At Law

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 801 S. Grand Av., 11<sup>th</sup> Fl., Los Angeles, CA 90017.

On March 21, 2012, I served the following documents: NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY" on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at my business address in a US Postal Service Office for delivery by Certified Mail with the postage thereon fully prepaid:

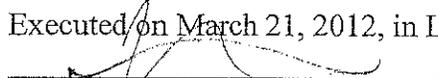
Robert Steed or Managing Partner  
Trivani International LLC  
198 S. Main Street  
Springville, Utah 84663

On March 21, 2012, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1) on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at my business address in a US Postal Service Office for delivery by Certified Mail with the postage thereon fully prepaid:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On March 21, 2012, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at my business address with the U.S. Postal Service for delivery by Priority Mail with the postage thereon fully prepaid.

Executed on March 21, 2012, in Los Angeles, CA

  
Gideon Kracov

## SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Contra Costa County 725 Court Street, Room 402 Martinez, CA 94553
District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Imperial County 939 Main Street El Centro, CA 92243	District Attorney of Kings County 1400 West Lacey Hanford, CA 93230
District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Modoc County 204 S Court Street Alturas, CA 96101-4020
District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482
District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Nevada County 110 Union Street Nevada City, CA 95959	District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Humboldt County 825 5th Street Eureka, CA 95501
District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Marin County 3501 Civic Center Dr., Room 183 San Rafael, CA 94903

District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of Monterey County PO Box 1131 Salinas, CA 93901	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92701
District Attorney of Placer County 10810 Justice Center Drive Suite 240 Roseville, CA 95678	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92112
District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408	District Attorney of Santa Clara County 70 West Hedding Street San Jose, CA 95110	District Attorney of Sierra County Courthouse, P.O. Box 457 Downieville, CA 95936
District Attorney of Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	District Attorney of Tuolumne County 2 South Green Sonora, CA 95370
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney of San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023
District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103	District Attorney of San Mateo County 400 County Ctr, 3 <sup>rd</sup> Fl Redwood City, CA 94063	District Attorney of Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95061
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Stanislaus County 800 11 <sup>th</sup> Street, Room 200 Modesto, CA 95353	District Attorney of Trinity County P.O. Box 1310 Weaverville, CA 96093
District Attorney of Ventura County 800 South Victoria Ave Ventura, CA 93009	Los Angeles City Attorney's Office Room 1800, City Hall East 200 N. Main Street Los Angeles, CA 90012	District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501
District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101

District Attorney of Shasta County 1525 Court Street, Third Floor Redding, CA 96001-1632	District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533	District Attorney of Sutter County 446 Second Street Yuba City, CA 95991
District Attorney of Tulare County 221 S. Mooney Ave, Room 224 Visalia, CA 93291	District Attorney of Yolo County 301 Second Street Woodland, CA 95695	San Diego City Attorney's Office 1200 3rd Avenue, 12th Floor San Diego, CA 92101
San Francisco City Attorney's Office 1 Dr. Carleton B. Goodlett Place Room 234 San Francisco, CA 94102	San Jose City Attorney's Office 200 East Santa Clara Street San Jose, CA 95113	Ms. Laura Zuckerman Deputy Attorney General OFFICE OF THE ATTORNEY GENERAL - Prop. 65 Enforcement Reporting Coordinator 1515 Clay Street, Ste. 2000 Oakland, CA 94612