

1 ANDREW L. PACKARD (SBN 168690)
2 LAW OFFICES OF ANDREW L. PACKARD
294 Page Street
3 San Francisco, California 94102
Telephone: (415) 431-2970
4 Facsimile (415) 431-0410
ATTORNEYS FOR PLAINTIFF
5 AS YOU SOW

6 STANLEY W. LANDFAIR (SBN 160003)
MCKENNA & CUNEO, L.L.P.
7 Steuart Street Tower, 27th Floor
One Market Plaza
8 San Francisco, California 94105
Telephone: (415) 267-4000
9 Facsimile: (415) 267-4198
ATTORNEYS FOR DEFENDANT
10 K'AN HERB COMPANY

ENDORSED
FILED
San Francisco County Superior Court

MAY 1 - 2002

GORDON PARK-LI, Clerk
DANIAL LEMIRE
BY: Deputy Clerk

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN FRANCISCO

14
15 AS YOU SOW, a non - profit corporation,
16 Plaintiff(s),

17 vs.

18 ADG CONCERNS, INC., BRION
CORPORATION, TAI SANG TRADING
19 COMPANY, INC., K'AN HERB
COMPANY, INC., LOTUS HERBS, INC.,
20 BIO ESSENCE CORPORATION, and
21 DOES 4 to 100, inclusive,
Defendants.

CASE NO. 3230 

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT K'AN HERB
COMPANY**

22
23
24 This Consent Judgment is entered into by and between AS YOU SOW ("Plaintiff" or
25 "AYS"), a non-profit organization, and K'AN HERB COMPANY, INC. ("Defendant" or
26 "K'an") to resolve all claims raised against K'an in the Complaint filed in the above-captioned
27 action. This Consent Judgment shall be effective upon entry. Plaintiff and Defendant
28 (collectively "the Parties") agree to the terms and conditions set forth below.

PROPOSED CONSENT JUDGMENT AS TO DEFENDANT K'AN HERB COMPANY, INC.

1 **1. INTRODUCTION**

2 **1.1** AYS is a Section 501(c)(3) non-profit corporation dedicated to, among other
3 causes, the protection of the environment, the promotion of human health, the improvement of
4 worker and consumer rights, environmental education, and corporate accountability. AYS is
5 based in San Francisco, California and incorporated under the laws of the State of California.

6 **1.2** K'an is a California corporation headquartered in Scott Valley, California. The
7 Company manufactures, packages, distributes and sells to licensed health care practitioners in
8 California certain herbal dietary supplements formulated into tablets and liquid extracts (the
9 "Products"), which consist of single or multiple herbal ingredients, and which contain certain
10 chemicals that are known to the State to cause cancer and reproductive toxicity within the
11 meaning of "Proposition 65," the popular name for the Safe Drinking Water and Toxic
12 Enforcement Act of 1986, California Health and Safety Code § 25249.5 *et seq.*, and the
13 implementing regulation set forth at Cal. Code Regs., tit. 22, § 12000, *et seq.*

14 **1.3** The names of each of the Products covered by the injunctive provisions of this
15 Consent Judgment are set forth in Exhibit A hereto. Any Products not appearing on Exhibit A
16 hereto are not covered by the injunctive provisions of this Consent Judgment or the release of
17 liability set forth herein, except as provided in paragraphs 1.13 and 7.1.

18 **1.4** On February 27, 1987, the State of California officially listed the chemical lead
19 as a chemical known to cause reproductive toxicity, pursuant to California Health and Safety
20 Code § 25249.8;

21 **1.5** On October 1, 1992, the State of California officially listed the chemicals lead
22 and lead compounds as chemicals known to cause cancer, pursuant to California Health and
23 Safety Code § 25249.8;

24 **1.6** On May 1, 1997, the State of California officially listed the chemical arsenic as a
25 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code
26 § 25249.8;

1 **1.7** On February 27, 1987, the State of California officially listed the chemical
2 arsenic as a chemical known to cause cancer, pursuant to California Health and Safety Code
3 § 25249.8;

4 **1.8** On July 1, 1990, the State of California officially listed the chemical mercury and
5 mercury compounds as chemicals know to cause reproductive toxicity, pursuant to California
6 Health and Safety Code § 25249.8;

7 **1.9** On October 1, 1987, the State of California officially listed the chemical
8 cadmium and cadmium compounds as known to cause cancer, pursuant to California Health and
9 Safety Code § 25249.8;

10 **1.10** On May 1, 1997, the State of California officially listed the chemical cadmium as
11 known to cause reproductive toxicity, pursuant to California Health and Safety Code § 25249.8

12 **1.11** The Products have been imported, manufactured, packaged, distributed and sold
13 by K'an for use in California since at least July 17, 1997;

14 **1.12** On April 27, 2001 Plaintiff served Defendant and each of the appropriate public
15 enforcement agencies with documents entitled "60 – Day Notice" advising the recipients that
16 Defendant was in violation of Proposition 65 for failing to warn individuals in California of
17 exposure to certain chemicals known to the State of California to cause cancer and/or
18 reproductive toxicity arising from the use of the Products. A copy of this Notice is attached
19 hereto as Exhibit B. Defendant stipulates for the purpose of this Consent Judgment that the
20 Notice is adequate to comply with Cal. Code Regs. Tit. 22. § 12903.

21 **1.13** After receiving such Notice, K'an and its legal counsel met with As You Sow
22 and its legal counsel to resolve the allegations in the Notice. K'an shared informally with As
23 You Sow relevant data regarding the Products. Based on this information, the Parties promptly
24 determined to settle the matter, and have worked amicably to negotiate a resolution. In the
25 course of these negotiations, K'an provided AYS with test results from an EPA-accredited
26 laboratory designated by AYS, qualified to conduct testing for the presence of chemicals in food
27 by inductively coupled plasma mass spectrometry, demonstrating the K'an Products that are
28 sold as liquid extracts (as currently formulated) do not warrant Proposition 65 warnings for lead,

1 arsenic, cadmium or mercury because they do not contain these chemicals at levels that would
2 result in exposure to average users of the products that would require warnings pursuant to
3 California Code of Regulations, tit. 22, § 12701 and § 12805.

4 **1.14** On July 20, 2001, AYS filed a complaint against Defendant under the caption *As*
5 *You Sow v. ADG Concerns, et al.*, Case Number 323070 (the "Action"), in San Francisco
6 Superior Court, alleging violations of Proposition 65, California Business and Professions Code
7 § 17200 *et seq.* and California Business and Professions Code § 17500.

8 **1.15** The Action was brought by AYS in the public interest at least sixty (60) days
9 after AYS provided notice of the Proposition 65 violations to Defendant and the appropriate
10 public enforcement agencies and none of the public enforcement agencies had commenced and
11 begun diligently prosecuting an action against K'an for such violations;

12 **1.16** For purposes of this Consent Judgment, the Parties stipulate that this Court has
13 subject matter jurisdiction over the allegations in the Complaint. Defendant K'an does not
14 contest the exercise of jurisdiction by this Court to enter this Consent Judgment as a full and
15 final resolution of all causes of action pled against K'an in the Complaint.

16 **1.17** The Parties enter into this Consent Judgment to settle disputed claims between
17 them and to avoid prolonged litigation. By execution of this Consent Judgment, Defendant does
18 not admit any violations of Proposition 65, or the Business and Professions Code, or any other
19 law or standard applicable to warning or disclosure concerning the manufacture, distribution
20 and/or sale of the Products. Nothing in this Consent Judgment shall be construed as an
21 admission by Defendant of any fact, issue of law, or violation of law; nor shall compliance with
22 this Consent Judgment constitute or be construed as an admission by Defendant of any fact,
23 issue of law, or violation of law.

24 **1.18** Nothing in this Consent Judgment shall prejudice, waive or impair any right,
25 remedy or defense the Parties may have in any other or future legal proceeding. This paragraph
26 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant
27 under this Consent Judgment.
28

1 **2. INJUNCTIVE PROVISIONS**

2 **2.1 Immediate Provision of Clear and Reasonable Warnings.** On or before
3 January 31, 2002, Settling Defendant shall permanently cease and no longer ship (or cause to be
4 shipped) for sale or use in California the Products identified on Exhibit A hereto unless each
5 individual unit of such Product bears one of the following warning statements, as appropriate, in
6 English and Chinese on its individual unit label packaging:

7 **WARNING: This product contains chemicals known to the State of California to**
8 **cause cancer and birth defects or other reproductive harm.**

9 **WARNING: This product contains chemicals known to the State of California to**
10 **cause cancer.**

11 **WARNING: This product contains chemicals known to the State of California to**
12 **cause birth defects or other reproductive harm.**

13 The Chinese translation for these warning statements is set forth at Exhibit C. These warning
14 statements shall be prominent and displayed on the unit packaging of each Product with such
15 conspicuousness, as compared with other words, statements, or designs, so as to render it likely
16 to be read and understood by an ordinary individual purchasing or using the Product. In
17 determining which of the warning statements above shall be used, both Parties agree that the
18 warning statement for cancer and birth defects or other reproductive harm is appropriate for all
19 of the Products listed at Exhibit A, unless tests conducted by an EPA-accredited laboratory
20 using inductively coupled plasma mass spectrometry demonstrate otherwise.

21 **2.2 Discontinued Sales of Specific Products.** On or before the entry of this
22 Consent Judgment, K'an shall discontinue sales of the tablet forms of the following products, as
23 they presently are formulated: Marrow Matters, and Meridian Passage. These products may be
24 reintroduced to the marketplace after it is demonstrated to AYS' satisfaction pursuant to
25 paragraph 10.4 that any lead or mercury in these products is present at levels no greater than the
26 levels allowed under standards promulgated by the United States Pharmacopoeia, *i.e.*, ten parts
per million for lead and three parts per million for mercury.

27 **2.3 Provision of Additional Information To Intermediaries/Non – End Users.**
28 Within thirty (30) days of the Execution Date of this Agreement (“Execution Date” is used

herein to mean the last date upon which the representatives of the Settling Parties, excluding
counsel, sign this Consent Judgment), Defendant shall send a Notification Letter to each of their
customers in California who have purchased any of the Products from Defendant in the year
preceding the Execution Date of this Agreement and that Defendant knows or has reason to
know repackage the Products in any fashion (such customers are hereafter referred to as
"Intermediaries/Non-End Users"). This Notification Letter shall notify these customers
regarding the warning requirements of Proposition 65 as they apply to each of the Products, and
instruct such customers as to how they may comply with Proposition 65 as it applies to each of
the Products. The verbatim language of the Notification Letter is attached hereto as Exhibit D.
A verbatim copy of the final Notice Letter sent in accordance with this subsection shall also be
mailed to AYS simultaneously with the mailing to the Intermediaries/Non-End Users.

2.4 Mandatory Testing. For the first three years following the execution of this
Consent Judgment, K'an shall have tests conducted by an EPA-accredited laboratory using
inductively coupled plasma mass spectrometry to measure the presence of lead, arsenic, or
mercury, if any, in each batch lot that K'an manufactures of the ten Products appearing in
Exhibit A having the highest sales by dollar volume in the preceding fiscal year. The results of
such tests shall be provided to AYS within thirty days after their receipt by K'an. Such test
data, and any other test data provided by K'an to AYS pursuant to this Consent Judgment, shall
be maintained strictly confidential between the Parties, and shall not be released or provided to
any other persons except the Court or upon order of the Court, and shall not be used for any
purposes other than the implementation or enforcement of this Consent Judgment.

3. CIVIL PENALTIES

3.1 Civil Penalty Assessment. Defendant agrees to pay a civil penalty to AYS in
the amount of \$7500 pursuant to Health and Safety Code § 25249.7(b). AYS shall remit 75% of
such civil penalty to the State of California pursuant to Health and Safety Code § 25192. This
penalty shall not be construed as a credit against any future claim against Defendant.

4. ADDITIONAL PAYMENT IN LIEU OF CIVIL PENALTIES

4.1 Defendant shall make an additional payment in lieu of further civil penalties in
the amount of \$32,500 to AYS. AYS shall distribute these funds to (a) California non-profit
groups, and (b) the AYS Proposition 65 Enforcement Fund; these funds shall be directed
towards efforts to reduce exposures to toxic chemicals and to increase consumer, worker and
community awareness of the health hazards posed by toxic chemicals. In deciding among
grantee proposals, the AYS Board of Directors takes into consideration a number of important
factors, including: (1) the nexus between the harm done in the underlying case(s), and the grant

1 program work; (2) the potential for toxics reduction, prevention, remediation or education
2 benefits to California citizens from the proposal; (3) the budget requirements of the proposed
3 grantee and the alternate funding sources available to it for its project; and (4) the Board's
4 assessment of the grantee's chances for success in its program work. (Declaration of Lawrence
5 E. Fahn In Support Of As You Sow's Motions To Approve Proposition 65 Settlements As To
6 Defendants Tai Sang Trading Company, K'an Herb Company and Lotus Herbs, Inc., at ¶4, filed
7 herein on April 8, 2002.)

5. REIMBURSEMENT OF FEES AND COSTS

5.1 **Reimbursement of Plaintiff's Investigative, Expert and Legal Fees and
6 Costs.** Defendant agrees to reimburse AYS for its reasonable investigative, expert, and legal
7 fees and costs incurred as a result of investigating and bringing this matter to Defendant's
8 attention, and negotiating a settlement in the public interest, in the amount of \$25,000.

6. MANNER OF PAYMENT

6.1 **Payment schedule.** The payments referred to in paragraphs 3-5 above shall be
10 made in four installments. The first installment shall be paid in the amount of \$20,000, within
11 ten days of entry of this Consent Judgment, and the remaining three payments in the amount of
12 \$15,000 each, shall be made 90, 180, and 270 days thereafter. All payments shall be made by
13 check payable to As You Sow, and remitted directly to AYS at 540 Pacific Avenue, San
14 Francisco, California 94133.

7. RELEASE OF LIABILITY

7.1 **Release of Liability of Defendant.** AYS, on its own behalf and on behalf of the
18 general public, waives all rights to institute any form of legal action against Defendant K'an, its
19 officers, directors, employees, agents, attorneys, representatives, parents, subsidiaries, affiliates,
20 divisions, subdivisions and customers (except with respect to Defendants ADG Concerns, Inc.,
21 Brion Corporation, Tai Sang Trading Company, Inc., Lotus Herbs, Inc. and Bio Essence
22 Corporation, to the extent that they may have failed to provide such warnings with respect to
23 any such Products) under Proposition 65 or the Business & Professions Code based upon
24 Defendant Kan's failure to provide warnings regarding alleged exposure to lead, mercury,
25 arsenic and/or cadmium, the alleged distribution of such Products so as to cause and/or increase
26 the risk of health risks to individuals in California, the alleged sale of such Products as
27 medicines and as being pure, safe and beneficial to human health, and the alleged failure to
28

1 disclose significant toxic hazards to individuals associated with the presence of such chemicals
2 in the Products, as sold by K'an on or before the entry of this Consent Judgment. .

3 **7.2 Release of Liability of AYS.** Defendant waives all rights to institute any form
4 of legal action against AYS, its officers, directors, attorneys and representatives (the "AYS
5 Releasees") for all actions or statements made or undertaken by the AYS Releasees in the
6 course of seeking enforcement of Proposition 65 or Business & Profession Code §§ 17200 *et*
7 *seq.* against Defendant in connection with the above-captioned case.

8 **8. CONSENT JUDGMENT**

9 **8.1 Consent Judgment.** Within fifty-five (55) days of the execution of this Consent
10 Judgment, the Parties shall submit this Consent Judgment to be approved by the San Francisco
11 Superior Court pursuant to California Code of Civil Procedure § 664.6. In the event this
12 Consent Judgment is not approved or entered by the Court, any funds paid shall be returned to
13 defendant K'an and the parties shall meet and confer.

14 **8.2 Submission to the Attorney General.** Within five (5) days of the Execution
15 Date of this Consent Judgment, AYS shall serve an executed copy of this Consent Judgment on
16 the California Attorney General on behalf of the Parties so that the Attorney General may
17 review this Consent Judgment prior to its submittal to the Court for approval. No sooner than
18 thirty (30) days after the Attorney General has received the aforementioned copy of this
19 Agreement, and in the absence of any written objection by the Attorney General to the terms of
20 this Agreement, the Parties shall then submit it to the Court for approval. Prior to submittal to
21 the Court for approval, AYS shall attach as Exhibit E hereto a proof of service attesting that this
22 Agreement has been served on the California Attorney General and the manner and date on
23 which that service was made.

24 **9. SEVERABILITY**

25 **9.1 Severability.** In the event that any of the provisions of this Consent Judgment
26 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be
27 adversely affected.

1 **10. ENFORCEMENT AND MODIFICATION**

2 **10.1 Disputes and Enforcement.** In the event that a dispute arises with respect to
3 any of the provisions of this Consent Judgment, the Parties shall meet and confer within 20 days
4 of receiving written notice of any alleged violation or request for modification. In the event the
5 Parties cannot resolve the dispute, this Consent Judgment may be enforced pursuant to Code of
6 Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any dispute
7 regarding compliance with the terms of this Consent Judgment shall be awarded its reasonable
8 fees and costs incurred, in addition to any other relief otherwise ordered by the Court.

9 **10.2 Modification of Judgment – Grounds.** The Parties acknowledge that new
10 toxicological information or exposure assessments concerning hazardous substances are
11 continuously becoming available, and that statutory and regulatory standards applicable to the
12 Products may evolve in the future. Accordingly, the Parties agree that either Party may elect to
13 file a motion pursuant to § 664.6 of the California Code of Civil Procedure, and under the
14 conditions set forth below, move the Court for modification of the warning requirement set forth
15 in Paragraph 2 on the grounds that it conflicts with the applicable law or science concerning the
16 Products. Any disputes regarding the issues set forth in this subsection shall be resolved in
17 accordance with the procedures set forth in subsections 10.1 above and 10.3 below.

18 **10.3 Modification of Judgment – Procedure.** In the spirit of cooperation and in the
19 interests of minimizing the investigative, expert and attorneys' fees and costs associated with
20 such a motion, the Parties agree to meet and confer in good faith as follows. Prior to filing a
21 motion pursuant to subsection 10.2 herein, the Party seeking to modify the Consent Judgment
22 first will provide the non – moving Party and the California Attorney General's Office with any
23 legal or scientific data upon which the motion would rely. The non – moving party and the
24 California Attorney General's Office shall be allowed a period of forty – five (45) days to
25 review that data and provide the moving party with its formal written response (the Attorney
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1 General's Office's failure to respond to this submission shall not be construed in any manner to
2 reflect any particular view, on the part of the Attorney General's Office of this Consent
3 Judgment or of the applicable law or science). The Parties then shall meet and confer within ten
4 (10) days of the non - moving party's written response. If, after meeting and conferring, the
5 moving party elects to proceed with a motion to amend this Consent Judgment, it may do so
6 with proper notice to the other Party and the Attorney General's Office as required under the
7 California Code of Civil Procedure. Such a motion may be accompanied by scientific data,
8 studies, written declarations, live testimony or discovery responses.
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10 **10.4 Modification of Judgment – Product Exemption As Additional Grounds.**

11 The Parties further acknowledge that Defendant may reformulate or modify the Products, its
12 manufacturing processes or its sources of ingredients in ways that may reduce the levels of any
13 or all of the chemicals described in subsections 1.4 - 1.10 above, such that a Proposition 65
14 warning for any or all of such Products may no longer be required at such time in the future.
15 Plaintiff, consistent with its dedication to the causes described at subsection 1.1 above, desires
16 to encourage such activities. Accordingly, the Parties have agreed that if Defendants contend
17 that any of the Products, manufacturing processes or sources of ingredients is reformulated or
18 modified such that any Product does not require a warning under Proposition 65, Defendants
19 shall also be entitled to seek a modification of this Consent Judgment on the additional ground
20 that a Product has been reformulated or otherwise modified such that it does not require a
21 warning under Proposition 65. For the purposes of this Consent Judgment, and until the lead
22 agency with authority to implement Proposition 65 designates otherwise, the Parties agree that
23 exposure to mercury at a level of 0.18 micrograms per day requires a warning for reproductive
24 toxicity under Proposition 65. In seeking such a modification of this Consent Judgment, the
25 burden shall rest on Defendant to adduce clear and convincing evidence that the modification is
26 warranted as a matter of law. Defendant shall produce, as part of their obligation to meet and
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1 confer pursuant to subsection 10.3 herein, test results from at least three different manufacturing
2 batches of the Product, each batch manufactured separately from any other, conducted by an
3 EPA-accredited laboratory using inductively coupled plasma-mass spectrometry. Further,
4 Defendant may produce such testing data as to any batch lot for any given Product to
5 demonstrate that such batch lot for such product does not require a warning under Proposition
6 65, provided that such batch lot is identifiable on the container of the Product. If the Parties are
7 in agreement that such test results demonstrate that a warning for a Product or batch lot of a
8 Product is not required, then the Parties shall memorialize their agreement by letter, and no
9 motion shall be required. If the Parties disagree, then any such motion under this subsection
10 shall comply with the procedural requirements of subsection 10.1 and 10.3 herein.

11
12 **11. GOVERNING LAW**

13 **11.1 Governing Law.** The terms of this Agreement shall be governed by the laws of
14 the State of California.

15 **12. NOTICES**

16 **12.1 Notices.** All correspondence and notices required to be provided under this
17 Agreement shall be in writing and shall be sent by first class registered or certified mail
18 addressed as follows:

19 All correspondence to AYS shall be mailed to:

20
21 Lawrence E. Fahn, Executive Director
22 As You Sow
23 540 Pacific Avenue
24 San Francisco, CA 94133

25 With a copy to:

26 Andrew L. Packard, Esq.
27 The Law Offices of Andrew L. Packard
28 294 Page Street
San Francisco, CA 94102

All correspondence to Defendant shall be mailed to:

Lise Groleau, President
K'an Herb Company, Inc.
6001 Butler Lane
Scott Valley, California 95006

With a copy to:

Stanley W. Landfair, Esq.
McKenna & Cuneo
Steuart Tower, 27th Floor
One Market
San Francisco, CA 94105

13. INTEGRATION AND MODIFICATION

13.1 Integration & Modification. This Agreement, together with the Exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the parties. This Agreement may be modified only upon the written agreement of the parties.

14. COUNTERPARTS

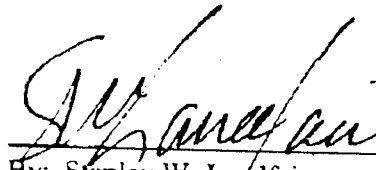
14.1 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

15. AUTHORIZATION

15.1 Authorization. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

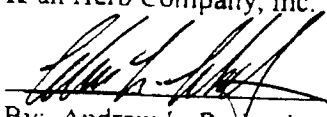
APPROVED AS TO FORM:

DATE: Dec 21, 2001



By: Stanley W. Landfair
Counsel for Defendant
K'an Herb Company, Inc.

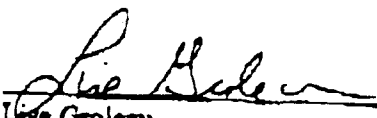
DATE: JANUARY 4, 2002



By: Andrew L. Packard
Counsel for Plaintiff As You Sow

IT IS SO STIPULATED:

DATE: December 21, 2001

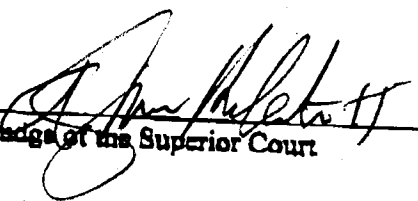

Louis Groleau
President
K'an Herb Company, Inc.

DATE: _____

Lawrence E. Fahn, Esq.
Executive Director
AS YOU SOW

IT IS SO ORDERED:

DATE: May 1, 2002


By: Judge of the Superior Court

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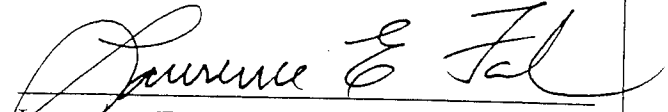
27970907

1 IT IS SO STIPULATED:

2 DATE: _____

3 _____
Lise Groleau
4 President
K'an Herb Company, Inc.

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6 DATE: Dec 21, 2001

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Lawrence E. Fahn, Esq.
8 Executive Director
AS YOU SOW

9 IT IS SO ORDERED:

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11 DATE: _____

12 _____
By: Judge of the Superior Court

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IT IS SO STIPULATED:

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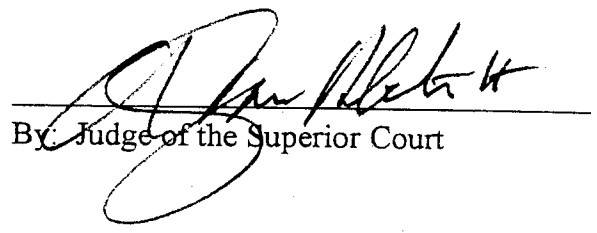
Lise Groleau
President
K'an Herb Company, Inc.

DATE: _____

Lawrence E. Fahn, Esq.
Executive Director
AS YOU SOW

IT IS SO ORDERED:

DATE: May 1, 2002



By: Judge of the Superior Court

EXHIBIT A

PRODUCTS REQUIRING "CLEAR AND REASONABLE"
PROPOSITION 65 WARNINGS

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5	ANCHOR THE YANG	TABLET
6	ANGELICA RESTORATIVE	TABLET
7	ANGELICA & EUCOMMIA SUPPORT FORMULA	TABLET
8	ANTIPHLOGISTIC	TABLET
9	AROUSE VIGOR	TABLET
10		
11	BI YAN PIAN	TABLET
12	BLUE GREEN LUNG	TABLET
13	BRIGHT EYE REHMANNIA	TABLET
14	CALM DRAGON FORMULA	TABLET
15		
16	CELESTIAL EMPEROR	TABLET
17	CHEST RELIEF	TABLET
18	CLEAR CHANNELS	TABLET
19	CLEAR MIND	TABLET
20		
21	CLUSTER DISSOLVING	TABLET
22	COLORFUL PHOENIX	TABLET
23	COMPASSIONATE SAGE	TABLET
24	COMFORT SHEN	TABLET
25		
26	COPTICLEAR	TABLET
27	COPTIDETOX	TABLET
28	CURING FORMULA	TABLET

1	DERMA WIND RELEASE	TABLET
2	DISPEL COUGH	TABLET
3	DISPEL INVASION	TABLET
4	DONG QUAI & ANEMARRHENA	TABLET
5	DRAIN THE MIDDLE	TABLET
6	DYNAMIC WARRIOR	TABLET
7	EARLY COMFORT	TABLET
8	EASE STRAIN	TABLET
9	FEED MEMORY	TABLET
10	FREE & EASY WANDERER	TABLET
11	GAN MAO LING	TABLET
12	GASTRODIA & UNCARIA WIND RELIEF	TABLET
13	GATHER VITALITY	TABLET
14	GINSENG & GECKO FORMULA	TABLET
15	GREAT WHITE LUNG	TABLET
16	GROW AND THRIVE	TABLET
17	HEMORREASE	TABLET
18	INITIAL DEFENSE	TABLET
19	INVIGORATE COLLATERALS	TABLET
20	IRRITEASE	TABLET
21	JADE SPRING NOURISHING FORMULA	TABLET
22	JADE WINDSCREEN	TABLET
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1	KUDZU RELEASING FORMULA	TABLET
2	LI DAN SUPPORT	TABLET
3	LI FEI LUNG SUPPORT	TABLET
4	LIVER FLOW	TABLET
5	LUCID CHANNEL	TABLET
6	MARROW MATTERS	TABLET
7	MEAL MOVER	TABLET
8	MERIDIAN CIRCULATION	TABLET
9	MERIDIAN PASSAGE	TABLET
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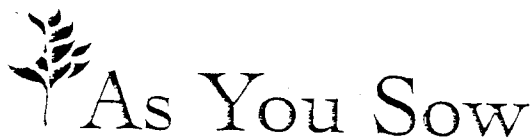
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EXHIBIT B

NOTICE OF VIOLATION

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A Foundation Planting Seeds for Social Change

Fax: (415) 391-3245

A NON-PROFIT CORPORATION
540 Pacific Avenue
San Francisco, California 94133
www.asyousow.org

April 27, 2001

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Mr./Ms. Groleau and Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. 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 public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **K'AN HERB COMPANY, INC.** ("K'an"). These violations involve lead, lead compounds, mercury, mercury compounds, arsenic, cadmium and cadmium compounds found in the type of consumer products described below and in Exhibit A hereto. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause reproductive toxicity. On May 1, 1997, the State of California officially listed arsenic (inorganic oxides) as a chemical known to cause reproductive toxicity. On February 27, 1987, the State of California officially listed arsenic as a chemical known to cause cancer. On October 1, 1987, the State of California officially listed cadmium and cadmium compounds as chemicals known to cause cancer. On May 1, 1997, the State of California officially listed cadmium as a chemical known to cause reproductive toxicity. This notice covers each of the specific types of products set forth below, and those products listed in Exhibit A hereto with respect to each of the above-referenced chemicals.



The products covered by this notice are *herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, teas, bulk teas, liquid herbal extracts, capsules, plasters and ointments* that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by K'an. The phrase "traditional patent medicines" above is used herein as defined by the California Department of Health Services: "herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids."

These toxic exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact, depending on each medicine's particular application. These ongoing violations have occurred every day since at least April 27, 1997, and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
294 Page Street
San Francisco, CA 94102
Telephone: (415) 431-2970

Very Truly Yours,



Larry Fahn
Executive Director

Enclosure

EXHIBIT A

Product Name	Alternate Name	Product Line
Adaptogen & Pediatric Introductory Kit		Chinese Modular Solutions
Aging Solution		Chinese Modular Solutions
Akebia Relieving Formula	Ba Zheng San	K'an Traditionals
Alembic Herbs Introductory Kit		Alembic Herbs
American Ginseng Root	Xi Yang Shen	K'an Singles
Anchor the Yang	Jiang Ya Wan	K'an Traditionals
Angelica and Eucommia Support	Yao Tong Pian	K'an Traditionals
Angelica Restorative Formula	Si Wu Tang	K'an Traditionals
Antipneumatic Formula	Chuan Xin Lian	K'an Traditionals
Arouse Vigor	Bu Zhong Yi Qi Tang	K'an Herbs
Artemisia Capillaris Herb	Yin Chen Hao (Mian)	K'an Singles
Astragalus Root	Huang Qi	K'an Singles
Bi Yan Pian	Bi Yan Pian	K'an Traditionals
Blood Mansion	Xue Fu Zhu Yu Tang	Alembic Herbs
Blue Green Lung Clearing Formula	Xiao Qing Long Tang	K'an Traditionals
Brighten the Eyes	Ming Mu Di Huang Wan	K'an Traditionals
Eupleurum & Four Substance	Chai Hu Si Wu Tang	Alembic Herbs
Eupleurum Root	Chai Hu	K'an Singles
Calm Dragon Formula	Chai Hu Jia Long Gu Mu Li Tang	K'an Traditionals
Casaca Sagrada Bark		K'an Singles
Celestial Emperor's Blend	Tian Wang Bu Xin Dan	K'an Traditionals
Chest Relief		Chinese Modular Solutions
Chinese White Ginseng Root	Ji Lin Bai Ren	K'an Singles
Chinese Hawthorn Fruit	Shan Za	K'an Singles
Chinese Red Ginseng Root	Shi Zhu Hong Ren Shen	K'an Singles
Chinese Licorice Root	Gan Cao	K'an Singles
Chrysanthemum Flower	Huang Ju Hua	K'an Singles
Cinnamon Twig Plus	Cui Zhi Jia Long Gu Mu Li	Alembic Herbs
Clear Mind	Bu Nao Wan	K'an Traditionals
Clear Channels	Gui Zhi Shao Yao Zhi Mu Tang	K'an Traditionals
Cluster Dissolving		Chinese Modular Solutions
CMS Introductory Kit		Chinese Modular Solutions
Colorful Phoenix Pearl Combo	Cai Feng Zhen Zhu An Chuang Wan	K'an Traditionals
Comfort Shen		Chinese Modular Solutions
Compassionate Sage	Hu Po Yang Xin Dan	K'an Herbs
Congestion Solution		Chinese Modular Solutions
Consolidate Blood		Chinese Modular Solutions
Consolidate Moisture		Chinese Modular Solutions
Consolidate Qi		Chinese Modular Solutions
SeptiClear	Huang Lian Su Pian	K'an Traditionals

EXHIBIT A

Product Name	Alternate Name	Product Line
Beetle Detox	Huang Lian Jie Du Tang	K'an Traditionals
Scorials Rhizome	Yan Hu Suo	K'an Singles
Turcuma Rhizome (Turmeric Root)	Yu Jin	K'an Singles
Curing Formula	Kan Ning Wan	K'an Traditionals
Dandelion Root	Pu Gong Ying	K'an Singles
Derma Wind Release	Xiao Feng San	K'an Traditionals
Digestion Solution		Chinese Modular Solutions
Dispel Invasion	Jing Fang Bai Du San	K'an Herbals
Dispel Cough	Zhi Sou San	K'an Traditionals
Disperse Qi		Chinese Modular Solutions
Disperse Moisture		Chinese Modular Solutions
Disperse Blood		Chinese Modular Solutions
Dong Quai Root	Dang Gui Shen	K'an Singles
Dong Quai & Anemarrhena	Dang Gui Nian Ton Tang	K'an Traditionals
Drain the Middle	Ban Xia Xie Xin Tang	K'an Traditionals
Dynamic Warrior	Jin Gui Shen Qi Wan	K'an Herbals
Early Comfort	Huo Xiang Zheng Qi San	K'an Herbals
Ease Strain		Chinese Modular Solutions
Echinacea Root		K'an Singles
Eclipta Herb	Han Lian Cao	K'an Singles
Epimedium Herb	Yin Yang Huo	K'an Singles
Eucommia Bark	Du Zhong	K'an Singles
Feed Memory		Chinese Modular Solutions
Feverfew Herb		K'an Singles
Free and Easy Wanderer	Xiao Yao Wan	K'an Traditionals
Gan Mao Ling	Gan Mao Ling	K'an Traditionals
Gastrodia & Uncaria Wind Relief	Tian Ma Gou Teng Yin	K'an Traditionals
Gather Vitality	Gui Pi Tang	K'an Herbals
Ginger Rhizome - Fresh	Sheng Jiang	K'an Singles
Ginkgo Leaf	Yin Guo Ye	K'an Singles
Ginseng & Gecko Formula	Ten Shen Ge Jie San	K'an Traditionals
Great White Lung Clearing Formula	Ma Xing Shi Gan Tang	K'an Traditionals
Grow and Thrive		Chinese Modular Solutions
Gynostemma Herb	Jiao Gu Lan	K'an Singles
Harmonize Liver & Spleen		Chinese Modular Solutions
Harmonize Lung & Liver		Chinese Modular Solutions
Harmonize Spleen & Kidney		Chinese Modular Solutions
Harmonize Heart & Lung		Chinese Modular Solutions
Harmonize Kidney & Heart		Chinese Modular Solutions
Hemorrhage	Huai Jiao Wan	K'an Traditionals

EXHIBIT A

Product Name	Alternate Name	Product Line
Initial Defense	Yin Qiao San & Sang Ju Yin	K'an Herbals
Incorporate the Collaterals	Huo Luo Xiao Ling Dan	K'an Traditionals
Intease	Tong Xie Yao Fang/Huo Xiang Zheng Qi San	K'an Traditionals
Isatis Root	Ban Lan Gen	K'an Singles
Jade Spring Nourishing Formula	Yu Quan Wan	K'an Traditionals
Jade Windscreen	Yu Ping Feng San	K'an Traditionals
Jujube Seed	Suan Zao Ren (Chao)	K'an Singles
Kava Root		K'an Singles
KHS Intro Kit		K'an Singles
Kudzu Root	Ge Gen	K'an Singles
Kudzu Releasing Formula	Ge Gen Tang	K'an Traditionals
K'an Traditionals Introductory Kit		K'an Traditionals
K'an Prescription Labels		K'an Herbals
K'an Traditionals Introductory Kit New Formulas		K'an Traditionals
K'an Herbals Intro Kit		K'an Herbals
Li Dan Support	Li Dan Pian	K'an Traditionals
Li Fei Lung Support	Li Fei Tang	K'an Traditionals
Linking Decoration	Yi Guan Jian	Alembic Herbals
Lithospermum Root	Zi Cao	K'an Singles
Liver Flow	Shu Gan Wan	K'an Traditionals
Lucid Channel	Er Chen Wan	K'an Herbals
Lycii Fruit	Gou Qi Zi	K'an Singles
Marrow Matters		Chinese Modular Solutions
Meal Mover		Chinese Modular Solutions
Meridian Circulation	Du Huo Ji Sheng Tang	K'an Herbals
Meridian Passage	Sheng Tong Zhu Yu Tang/Mo Yau Xiang Sheng	K'an Herbals
Milk Thistle Seed		K'an Singles
Milletia Reticulata Root	Ji Xue Teng	K'an Singles
Minor Eupleurum Formulation	Xiao Chai Hu Tang	K'an Traditionals
Move Mountains		Chinese Modular Solutions
Nettle Herb		K'an Singles
Oidenlandia Herb	Bai Hua She She Cao	K'an Singles
Peony & Licorice Formula	Shao Yao Gan Cao Tang	K'an Traditionals
Phlogisticlean		Chinese Modular Solutions
Phlegm Phlegm Dispersing Formula	Qing Qi Hua Tan Wan	K'an Traditionals
Platycodon Root	Jie Geng	K'an Singles
Pumpkin Qi	Ban Xia Huo Po	K'an Traditionals

EXHIBIT A

Product Name	Alternate Name	Product Line
Polygonum Root	Yan Zhi (Da)	K'an Singles
Polygonum Multiflorum Root	He Shou Wu	K'an Singles
Prosperous Farmer	Liu Jun Zi Tang	K'an Herbals
Pseudoginseng Root	Tian Qi	K'an Singles
Purge Damp Heat		Chinese Modular Solutions
Purge External Wind		Chinese Modular Solutions
Purge Cold		Chinese Modular Solutions
Purge Blood		Chinese Modular Solutions
Purge Internal Wind		Chinese Modular Solutions
Purge Heat		Chinese Modular Solutions
Purge Phlegm		Chinese Modular Solutions
Purge Qi		Chinese Modular Solutions
Purge Moisture		Chinese Modular Solutions
Qing Shu	Qing Shu Yi Qi Tang	Alembic Herbals
Qing Fei Clearing Formula	Qing Fei Yi Huo Pian	K'an Traditionals
Quell Fire	Long Dan Xie Gan Tang	K'an Herbals
Quiet Contemplative	Liu Wei Di Huang Wan	K'an Herbals
Red Sage Root		K'an Singles
Red Clover Flower		K'an Singles
Rejuvenate & Regulate	Huang Qi Ren Shen Tang	Alembic Herbals
Relaxed Wanderer	Xiao Yao San	K'an Herbals
Replenish Essence		Chinese Modular Solutions
Rescue Formula	Gan Mai Da Zao Tang	K'an Traditionals
Resilience		Chinese Modular Solutions
Restore Integrity	Strengthen Kidney & Heart	K'an Herbals
Saw Palmetto Fruit		K'an Singles
Schisandra Fruit	Wu Wei Zi	K'an Singles
Shen Ling Spleen Support	Sheng Ling Bai Zhu San	K'an Traditionals
Siberian Ginseng Root	Ci Wu Jia (Shen)	K'an Singles
Siler & Coix Clearing Formula	Qing Shang Fang Feng Tang Jia Yi Yi Ren	K'an Traditionals
Simple Solutions Introductory Kit		Chinese Modular Solutions
Six Gentlemen	Liu Jun Zi Tang	K'an Traditionals
Smooth Response	Run Chang Wang	K'an Traditionals
St. John's Wort Herb	Tian Ji Huang	K'an Singles
Stomach Relief	Wei Ti Ling	K'an Traditionals
Strengthen Liver		Chinese Modular Solutions
Strengthen Kidney		Chinese Modular Solutions
Strengthen Spleen		Chinese Modular Solutions
Strengthen Heart		Chinese Modular Solutions

EXHIBIT A

Product Name	Alternate Name	Product Line
Strengthen Lung		Chinese Modular Solutions
Temper Fire	Deficient Kidney Fire	K'an Herbals
Ten Treasures	Shi Quan Da Bu Tang	K'an Traditionals
Tension Solution		Chinese Modular Solutions
Tired Solution		Chinese Modular Solutions
Tonify Qi		Chinese Modular Solutions
Tonify Blood		Chinese Modular Solutions
Tonify Moisture		Chinese Modular Solutions
Two Immortals	Er Xian Tang	K'an Traditionals
Unlocking the Gate		Chinese Modular Solutions
Water's Way	Wu Ling San	K'an Traditionals
Weight Solution		Chinese Modular Solutions
White Peony Root	Bai Shao	K'an Singles
Windbreaker		Chinese Modular Solutions
Wise Judge	Sha Shen Mai Dong Yin & Sheng Mai San	K'an Herbals
Wise Woman's Well		Chinese Modular Solutions
Woman's Cycle Solution		Chinese Modular Solutions
Women's Rhythm	Tong Yu Jian & Si Wu Tang	K'an Herbals
Women's Precious	Ba Zhen Yi Mu Wan	K'an Herbals
Women's Chamber	Gui Zhi Fu Ling Wan	K'an Herbals
Women's Journey	Wen Jing Tang & Er Xian Tang	K'an Herbals
Yin Qiao	Yin Qiao San	K'an Traditionals
Zhong Gan Ling	Zhong Gan Ling	K'an Traditionals
Zizyphus Sleep Formula	Suan Zao Ren Tang	K'an Traditionals

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, and not a party to the within action; my business address is: 540 Pacific Avenue, San Francisco, CA 94133.

On April 27, 2001, I served the following documents:

- Notice of Violation of California Health & Safety Code §25249.5 et seq., including Exhibit A
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

K'an Herb Company
Lisa Groleau, CEO
6001 Butler Lane
Scotts Valley, CA 95066

On April 27, 2001, I served the following document(s):


- Notice of Violation of California Health & Safety Code §25249.5 et seq., including Exhibit A

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Craig Thompson, Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
Post Office Box 944255
Sacramento, CA 94244-2550

and 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 United States Postal Service mail box.

Executed on April 27, 2001, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 04/05/00)

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1205 FALLON ST RM 300
OAKLAND CA 94612

THE HONORABLE PHILIP MCDOWELL
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE DEAN FLIPPO
MONTEREY COUNTY DISTRICT ATTORNEY
PO BOX 1131
SALINAS CA 93902

THE HONORABLE ALAN TURNER
ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE EDWARD R JAGELS
KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE FL 4
BAKERSFIELD CA 93301

THE HONORABLE GARY LIEBERSTEIN
NAPA COUNTY DISTRICT ATTORNEY
931 PARKWAY MALL
NAPA CA 94559

THE HONORABLE TODD D RIEBE
MADON COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

THE HONORABLE RON CALHOUN
KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

THE HONORABLE MICHAEL FERGUSON
NEVADA COUNTY DISTRICT ATTORNEY
201 CHURCH ST STE 8
NEVADA CITY CA 95959

THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
26 COUNTY CTR DR
CROWLEY CA 95968

THE HONORABLE GARY LUCK
LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

THE HONORABLE TONY RACKAUCKAS
ORANGE COUNTY DISTRICT ATTORNEY
700 CIVIC CTR DR W RM 200
SANTA ANA CA 92701

THE HONORABLE PETER H SMITH
CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

THE HONORABLE ROBERT BURNS
LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

THE HONORABLE BRAD FENOCCHIO
PLACER COUNTY DISTRICT ATTORNEY
11562 B AVE
AUBURN CA 95603

THE HONORABLE JOHN POYNER
COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST
COLUSA CA 95932

THE HONORABLE GIL GARCETTI
LA COUNTY DISTRICT ATTORNEY
210 W TEMPLE ST STE 18000
LOS ANGELES CA 90012-3210

THE HONORABLE JAMES REICHL
PLUMAS COUNTY DISTRICT ATTORNEY
520 MAIN ST RM 404
QUINCY CA 95971

THE HONORABLE GARY T YANCEY
CONTRA COSTA COUNTY DISTRICT ATTORNEY
PO BOX 670
MARTINEZ CA 94551

THE HONORABLE ERNEST LICALSI
MADERA COUNTY DISTRICT ATTORNEY
209 W YOSEMITE AVE
MADERA CA 93637

THE HONORABLE GROVER C TRASK II
RIVERSIDE COUNTY DISTRICT ATTORNEY
4075 MAIN ST
RIVERSIDE CA 92501

THE HONORABLE ROBERT J DROSSEL
DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST
CRESCENT CITY CA 95531

THE HONORABLE PAULA FRESCHI KAMENA
MARIN COUNTY DISTRICT ATTORNEY
3501 CIVIC CTR DR RM 130
SAN RAFAEL CA 94903

THE HONORABLE JAN SCULLY
SACRAMENTO COUNTY DISTRICT ATTORNEY
901 G ST
SACRAMENTO CA 95814

THE HONORABLE GARY L LACY
EL DORADO COUNTY DISTRICT ATTORNEY
815 MAIN ST
PLACERVILLE CA 95667

THE HONORABLE CHRISTINE A JOHNSON
MARIPOSA COUNTY DISTRICT ATTORNEY
PO BOX 748
MARIPOSA CA 95338

THE HONORABLE HARRY J DAMKAR
SAN BENITO COUNTY DISTRICT ATTORNEY
419 FOURTH ST
HOLLISTER CA 95023-3801

THE HONORABLE EDWARD W HUNT
FRESNO COUNTY DISTRICT ATTORNEY
1220 TULARE ST STE 1000
FRESNO CA 93721

THE HONORABLE NORMAN VROMAN
MENDOCINO COUNTY DISTRICT ATTORNEY
PO BOX 1000
UKIAH CA 95482

THE HONORABLE DENNIS L STOUT
SAN BERNARDINO COUNTY DISTRICT ATTORNEY
316 N MTN VIEW AVE
SAN BERNARDINO CA 92415-0004

THE HONORABLE ROBERT HOLZAPFEL
GLENN COUNTY DISTRICT ATTORNEY
PO BOX 430
WILLOWS CA 95988

THE HONORABLE GORDON SPENCER
MERCED COUNTY DISTRICT ATTORNEY
2222 M ST
MERCED CA 95340

THE HONORABLE PAUL PFINGST
SAN DIEGO COUNTY DISTRICT ATTORNEY
330 W BROADWAY RM 1300
SAN DIEGO CA 92112

THE HONORABLE TERRY R FARMER
HUMBOLDT COUNTY DISTRICT ATTORNEY
125 FIFTH ST FL 4
EUREKA CA 95501

THE HONORABLE TOM BUCKWALTER
MODOC COUNTY DISTRICT ATTORNEY
PO BOX 1171
ALTURAS CA 96101

THE HONORABLE TERENCE HALLINAN
SAN FRANCISCO COUNTY DISTRICT ATTORNEY
880 BRYANT ST STE 322
SAN FRANCISCO CA 94103

THE HONORABLE GILBERT CTERO
IMPERIAL COUNTY DISTRICT ATTORNEY
139 W MAIN ST
EL CENTRO CA 92243

THE HONORABLE GEORGE BOOTH
MONO COUNTY DISTRICT ATTORNEY
PO BOX 617
BRIDGEPORT CA 93517

THE HONORABLE JOHN D PHILLIPS
SAN JOAQUIN COUNTY DISTRICT ATTORNEY
222 E WEBER ST RM 202
STOCKTON CA 95202

THE HONORABLE GERALD T SHEA
SAN LUIS OBISPO COUNTY DISTRICT ATTORNEY
COUNTY GOVERNMENT CTR RM 450
SAN LUIS OBISPO CA 93408

THE HONORABLE DAVID L CROSS
TRINITY COUNTY DISTRICT ATTORNEY
PO BOX 310
WEAVERVILLE CA 96093

THE HONORABLE JAMES P. FOX
SAN MATEO COUNTY DISTRICT ATTORNEY
400 COUNTY CTR
REDWOOD CITY CA 94063

THE HONORABLE PHILIP J CLINE
TULARE COUNTY DISTRICT ATTORNEY
2350 BURREL AVE STE 224
VISALIA CA 93291

THE HONORABLE THOMAS W SNEDDON JR
SANTA BARBARA COUNTY DISTRICT ATTORNEY
1105 SANTA BARBARA ST
SANTA BARBARA CA 93101

THE HONORABLE TIMOTHY CLANCY
TUOLUMNE COUNTY DISTRICT ATTORNEY
2 S GREEN ST
SONORA CA 95370

THE HONORABLE GEORGE KENNEDY
SANTA CLARA COUNTY DISTRICT ATTORNEY
70 W HEDDING ST
SAN JOSE CA 95110

THE HONORABLE MICHAEL D BRADBURY
VENTURA COUNTY DISTRICT ATTORNEY
800 S VICTORIA AVE
VENTURA CA 93009

THE HONORABLE RONALD L RUIZ
SANTA CRUZ COUNTY DISTRICT ATTORNEY
701 OCEAN ST STE 200
SANTA CRUZ CA 95060

THE HONORABLE DAVID C HENDERSON
YOLO COUNTY DISTRICT ATTORNEY
301 SECOND ST
WOODLAND CA 95695

THE HONORABLE MCGREGOR SCOTT
SHASTA COUNTY DISTRICT ATTORNEY
1525 COURT ST FL 3
REDDING CA 96001

THE HONORABLE PATRICK MCGRATH
YUBA COUNTY DISTRICT ATTORNEY
215 FIFTH ST
MARYSVILLE CA 95901

THE HONORABLE SHARON O SULLIVAN
SIERRA COUNTY DISTRICT ATTORNEY
PO BOX 457
DOWNIEVILLE CA 95936

LOS ANGELES CITY ATTORNEY'S OFFICE
200 N MAIN ST RM 1800
LOS ANGELES CA 90012

THE HONORABLE PETER F KNOLL
SISKIYOU COUNTY DISTRICT ATTORNEY
PO BOX 986
YREKA CA 96097

SAN DIEGO CITY ATTORNEY'S OFFICE
CIVIC CENTER PLAZA
1200 THIRD AVE STE 1200
SAN DIEGO CA 92101

THE HONORABLE DAVID W PAULSON
SOLANO COUNTY DISTRICT ATTORNEY
600 UNION AVE
FAIRFIELD CA 94533

SAN JOSE CITY ATTORNEY'S OFFICE
151 W MISSION ST
SAN JOSE CA 95110

THE HONORABLE J MICHAEL MULLINS
SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DR RM 212
SANTA ROSA CA 95403

SAN FRANCISCO CITY ATTORNEY'S OFFICE
CITY HALL, ROOM 234
SAN FRANCISCO, CA 94102

THE HONORABLE JAMES C BRAZELTON
STANISLAUS COUNTY DISTRICT ATTORNEY
PO BOX 442
MODESTO CA 95351

THE HONORABLE CARL V ADAMS
SUTTER COUNTY DISTRICT ATTORNEY
448 SECOND ST
YUBA CITY CA 95993

THE HONORABLE GREGG COHEN
TEHAMA COUNTY DISTRICT ATTORNEY
PO BOX 810
RED BLUFF CA 96083

EXHIBIT C

CHINESE TRANSLATION FOR WARNING

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Warning:

This Product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

警告：

此產品含有加州政府認出了的化學品會導致癌症和生育缺陷或其他的生殖傷害。

Warning:

This Product contains chemicals known to the State of California to cause cancer.

警告：

此產品含有加州政府認出了的化學品會導致癌症。

Warning:

This Product contains chemicals known to the State of California to cause birth defects or other reproductive harm.

警告：

此產品含有加州政府認出了的化學品會導致生育缺陷或其他的生殖傷害。

EXHIBIT D

NOTIFICATION LETTER

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Dear Customer:

The products you have purchased from K'an Herb Co. contain levels of lead, arsenic, mercury and/or cadmium that require a warning pursuant to California's Proposition 65 (Health & Safety Code § 25249.5, et seq.). Pursuant to a court order, we have begun the process by which English and Chinese warnings will be provided for our products by _____.

The purpose of this letter is to inform you that if you resell these products (either in whole or in part) you may be required to provide a clear and reasonable warning within the meaning of Proposition 65 to the purchasers of the product. Failure to provide these warning may result in your being subject to civil penalties of up to \$2500 per violation and other sanctions. You may want to consult legal counsel concerning your obligations under the law.

The warning must be provided unless you can establish in court that the levels of Proposition 65 listed chemicals (including, but not limited to lead, arsenic, mercury and cadmium) in the products you sell are low enough that the maximum daily recommended dosage of the product will not result in exposures above the levels requiring health hazard warnings. For additional information regarding the requirements of Proposition 65, you should contact the Office of Environmental Health Hazard Assessment at (510) 622-3170, Fax: (510) 622-3218, or on the Internet at www.oehha.ca.gov.

Sincerely,

EXHIBIT E

PROOF OF SERVICE ON
ATTORNEY GENERAL

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PROOF OF SERVICE

I, Andrew L. Packard, 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 294 Page Street, San Francisco, California 94102.

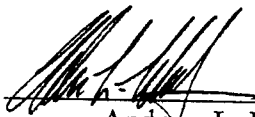
On January 4, 2002, I served the following documents:

CONSENT JUDGMENT AGAINST DEFENDANT K'AN HERB COMPANY, INC.

in this action by placing a true and correct copy thereof in a sealed envelope, first class, postage pre-paid, addressed to the party listed below, and depositing it in a United States Postal Service mail box:

Edward G. Weil, Esq.
Deputy Attorney General
California Attorney General's Office
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

Executed on February 8, 2002, at San Francisco, California.



Andrew L. Packard