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4 294 Page Street  
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7 Fax: (415) 431-0410

8 Attorneys for Plaintiff  
9 AS YOU SOW

ENDORSED  
FILED  
San Francisco County Superior Court

JUL 24 2001

GORDON PARK-LI, Clerk  
BY: LILLIAN SMITH  
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN FRANCISCO

12 AS YOU SOW, a non-profit corporation,

13 Plaintiff,

14 vs.

15 HERBA ENTERPRISE, INC., KWOK-SHING  
16 IMPORT-EXPORT, INC., and DOES 1 to 200,  
17 inclusive,

18 Defendants.

CASE NO. 313637

~~[PROPOSED]~~ CONSENT JUDGMENT  
AS TO DEFENDANTS HERBA  
ENTERPRISE, INC. AND KWOK-  
SHING IMPORT-EXPORT, INC.

19 This Consent Judgment is entered into by and between AS YOU SOW, a non-profit  
20 organization ("Plaintiff"), and HERBA ENTERPRISE, INC. and KWOK-SHING IMPORT-  
21 EXPORT, INC. ("Settling Defendants") to resolve all claims raised in the Second Amended  
22 Complaint filed in the above-captioned action. This Consent Judgment shall be effective upon  
23 entry, provided that it is approved by this Court and entered as judgment in this case no later  
24 than July ~~10~~<sup>30</sup>, 2001. If this Court fails to approve this Consent Judgment or to enter it as full  
25 and final judgment by that date, this consent judgment shall be null and void and not binding on  
26 any Party. Plaintiff and Settling Defendants (collectively "the Parties") agree to the terms and  
27 conditions set forth below.  
28

[PROPOSED] CONSENT JUDGMENT

1           **1. INTRODUCTION**

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

6           **1.2 Settling Defendants are two California corporations that import, manufacture,**  
7 **package, distribute and sell in California certain herbs, herbal products, traditional patent**  
8 **medicines (defined as “herbal and patent medicines consisting of single or multiple herbal**  
9 **ingredients, including botanical, mineral and animal products, formulated into tablets, pills,**  
10 **powders and liquids”) bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent**  
11 **formulas, teas, bulk teas, liquid herbal extracts, capsules, plasters and ointments containing**  
12 **chemicals regulated by the State of California as known to cause cancer and/or reproductive**  
13 **toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986**  
14 **(“Proposition 65”), California Health and Safety Code §25249.5 et.; Title 22, California Code of**  
15 **Regulations, §12000 et seq. (the “Products”);**

16           **1.3 The names of each of the Products covered by this Consent Judgment are set forth in**  
17 **Exhibit A hereto (any items not appearing on Exhibit A are not covered by the injunctive**  
18 **provisions or the release of liability set forth herein);**

19           **1.4 On February 27, 1987, the State of California officially listed the chemical lead as a**  
20 **chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code**  
21 **§25249.8;**

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

25           **1.6 On May 1, 1997, the State of California officially listed the chemical arsenic as a**  
26 **chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code**  
27 **§25249.8;**

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

3           **1.8** On July 1, 1990, the State of California officially listed the chemical mercury and  
4 mercury compounds as chemicals known to cause reproductive toxicity, pursuant to California  
5 Health and Safety Code §25249.8;

6           **1.9** The Products have been imported, manufactured, packaged, distributed and sold by  
7 the Settling Defendants for use in California since at least July 17, 1996;

8           **1.10**       On May 19, 1999, June 20, 2000, and April 12, 2001 AYS served Herba and  
9 Kwok Shing and each of the appropriate public enforcement agencies with documents entitled  
10 "60-Day Notice" that provided Herba and Kwok Shing and the public enforcement agencies with  
11 notice that Herba and Kwok Shing were in violation of California Health and Safety Code  
12 §25249.6 et seq. ("Proposition 65") for failing to warn the purchasers and individuals using the  
13 Products that the use of the Products exposes them to certain chemicals known to the State of  
14 California to cause cancer and/or reproductive toxicity. Copies of these notices are attached  
15 hereto as Exhibit B. Settling Defendants stipulate for the purpose of this Consent Judgment that  
16 the Notices are adequate to comply with Cal. Code Regs. Tit. 22, § 12903.

17           **1.11**       On July 17, 2000, AYS filed a complaint against Herba and Kwok Shing  
18 entitled As You Sow v. Herba Enterprise, Inc., et al, Case Number 313637 (the "Action"), in San  
19 Francisco Superior Court, alleging violations of Proposition 65, The Sherman Food, Drug and  
20 Cosmetic Law ("Sherman Law"), California Business and Professions Code §17200 et seq. and  
21 California Business and Professions Code §17500;

22           **1.12**       The Action was brought by AYS in the public interest at least sixty (60) days  
23 after AYS provided notice of the Proposition 65 violations to Herba and Kwok Shing and the  
24 appropriate public enforcement agencies and none of the public enforcement agencies had  
25 commenced and begun diligently prosecuting an action against Herba or Kwok Shing for such  
26 violations;

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1           **1.13**       For purposes of this Consent Judgment, the Parties stipulate that this Court has  
2 subject matter jurisdiction over the allegations contained in the Second Amended Complaint.  
3 Settling Defendants do not contest the exercise of jurisdiction by this Court to enter this Consent  
4 Judgment as a full and final resolution of all causes of action pled in the Second Amended  
5 Complaint.

6           **1.14**       The Parties enter into this Consent Judgment to settle disputed claims between  
7 them and to avoid prolonged litigation. By execution of this Consent Judgment, Settling  
8 Defendants do not admit any violations of Proposition 65, the Sherman Act, or the Business and  
9 Professions Code, or any other law or standard applicable to warning or disclosure concerning the  
10 manufacture, distribution and/or sale of the Products. Nothing in this Consent Judgment shall be  
11 construed as an admission by Settling Defendants of any fact, issue of law, or violation of law;  
12 nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
13 Settling Defendants of any fact, issue of law, or violation of law.

14           **1.15**       Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
15 remedy or defense the Parties may have in any other or further legal proceeding. This paragraph  
16 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Settling  
17 Defendants under this Consent Judgment.

18  
19 **2.       INJUNCTIVE PROVISIONS**

20           **2.1       Provision of Clear and Reasonable Health Hazard Warnings for All Products**  
21 **That Are Designated As "Traditional Patent Medicine" On Exhibit A Hereto On Or Before**  
22 **September 1, 2001.** On or before September 1, 2001, Settling Defendants shall permanently  
23 cease and no longer ship (or cause to be shipped) for sale or use in California any of the Products  
24 designated as "Traditional Patent Medicines" on Exhibit A hereto unless each individual unit of  
25 such Product bears the following warning statement on its individual unit label packaging in both  
26 English and Chinese:  
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*le*

1           **WARNING: The use of this product will expose you to chemicals known to the**  
2           **State of California to cause cancer and birth defects or other reproductive harm.**

3           **警告：使用本產品將會使你遭受到加利**

4           **福來亞州已確認的化學品的影響**

5           **，導致癌症和生育缺陷或其他生殖傷害。**

6           The warning statement shall be prominent and displayed on the unit packaging of each Product  
7           with such conspicuousness, as compared with other words, statements, or designs so as to render  
8           it likely to be read and understood by an ordinary individual purchasing or using the Product.

9           The parties to the Consent Judgment agree that the exemplar attached hereto as Exhibit C satisfies  
10          the requirements of this subsection.

11          **2.2    Provision of Clear and Reasonable Health Hazard Warnings for All Products**  
12          **That Are Designated As "Other Covered Products" On Exhibit A Hereto On Or Before**  
13          **November 1, 2001. On or before November 1, 2001, Settling Defendants shall permanently**  
14          **cease and no longer ship (or cause to be shipped) for sale or use in California any of the Products**  
15          **designated as "Other Covered Products" on Exhibit A hereto unless each individual unit of such**  
16          **Product bears the following warning statement on its individual unit label packaging in both**  
17          **English and Chinese:**

18               **WARNING: The use of this product will expose you to chemicals known to the**  
19               **State of California to cause cancer and birth defects or other reproductive harm.**

20           **警告：使用本產品將會使你遭受到加利**

21           **福來亞州已確認的化學品的影響**

22           **，導致癌症和生育缺陷或其他生殖傷害。**

23           The warning statement shall be prominent and displayed on the unit packaging of each Product  
24           with such conspicuousness, as compared with other words, statements, or designs so as to render  
25           it likely to be read and understood by an ordinary individual purchasing or using the Product.

26           The parties to the Consent Judgment agree that the exemplar attached hereto as Exhibit C satisfies  
27          the requirements of this subsection.  
28

1                   **2.3 Provision of Additional Information For Products Sold To**  
2 **Intermediaries/Non-End Users.** Within thirty (30) days of the Execution Date of this  
3 Agreement (“Execution Date” is used herein to mean the last date upon which the representatives  
4 of the Settling Parties, excluding counsel, sign this Consent Judgment), Herba and Kwok-Shing  
5 shall send a Notification Letter to each of their customers who have purchased any of the  
6 Products from Herba or Kwok-Shing in the year preceding the Execution Date of this Agreement  
7 and who Herba knows or has reason to know repackage the Products in any fashion (such  
8 customers are hereafter referred to as “Intermediaries/Non-End Users”). This Notification Letter  
9 shall notify these customers regarding the warning requirements of Proposition 65 as they apply  
10 to each of the Products, and instruct such customers as to how they may comply with Proposition  
11 65 as it applies to each of the Products. The verbatim language of the Notification Letter is  
12 attached hereto as Exhibit D. A verbatim copy of the final Notice Letter sent in accordance with  
13 this subsection shall also be mailed to AYS simultaneously with the mailing to the  
14 Intermediaries/Non-End Users.

15                   **3. CIVIL PENALTIES**

16                   **3.1 Stipulated Civil Penalties For Future Violations of This Agreement.**

17 Proposition 65 provides for penalties of up to \$2500, per violation, per day. The parties stipulate  
18 to a civil penalty in the amount of \$100 per individual unit item sold in violation of Paragraph 2  
19 of this Agreement, subject to a satisfactory evidentiary showing by Plaintiff of such violation(s)  
20 upon a duly noticed motion in the San Francisco Superior Court. AYS shall remit 75% of this  
21 amount to the State of California pursuant to Health & Safety Code §25192.

22                   **3.2 Civil Penalty Assessment.** Herba and Kwok-Shing shall pay a civil penalty in the  
23 amount of \$5,000 to AYS, pursuant to Health & Safety Code §25249.7(b). AYS shall remit 75%  
24 of this amount to the State of California pursuant to Health & Safety Code §25192.

25                   **4. RESTITUTION**

26                   **4.1 Restitution.** Herba and Kwok-Shing shall make a restitutionary payment in the  
27 amount of \$60,000 to AYS. AYS shall forward these funds to (a) California non-profit groups,  
28

1 and (b) the AYS Proposition 65 Enforcement Fund to reduce exposures to toxic chemicals, and to  
2 increase consumer, worker and community awareness of the health hazards posed by toxic  
3 chemicals.

4 **5. REIMBURSEMENT OF FEES AND COSTS**

5 **5.1 Reimbursement of Plaintiff's Investigative, Expert and Legal Fees and Costs.**

6 Herba and Kwok Shing shall pay AYS for its reasonable investigative, expert, and legal fees and  
7 costs incurred as a result of investigating, bringing this matter to Herba and Kwok Shing's  
8 attention, and negotiating a settlement in the public interest. The amount of these fees and costs  
9 is \$65,000.

10 **6. PAYMENT OBLIGATIONS**

11 **6.1 Pursuant to Paragraphs 3.2, 4.1 and 5.1 herein, Herba and Kwok Shing shall be**  
12 **jointly and severally liable for a payment in the amount of \$130,000 to AYS. This payment shall**  
13 **be made in four installments as follows. Within five (5) days of the Execution Date of this**  
14 **Consent Judgment, Herba and Kwok Shing shall deliver to AYS the first installment in the sum**  
15 **of \$65,000; within thirty-five (35) days of the Execution Date of this Consent Judgment Herba**  
16 **and Kwok Shing shall deliver to AYS the second installment in the sum of \$25,000; within sixty-**  
17 **five (65) days of the Execution Date of this Consent Judgment Herba and Kwok Shing shall**  
18 **deliver to AYS the third installment in the sum of \$20,000; and, within ninety-five (95) days of**  
19 **the Execution Date of this Agreement Herba and Kwok Shing shall deliver to AYS the fourth and**  
20 **final installment in the sum of \$20,000.**

21 **7. RELEASE OF LIABILITY**

22 **7.1 Release of Liability Of Herba and Kwok Shing.** AYS waives all rights to  
23 institute any form of legal action against Herba or Kwok Shing, their officers, directors,  
24 employees, agents, attorneys, representatives, parents, subsidiaries, affiliates, divisions,  
25 subdivisions and customers, under Proposition 65 or the Business & Professions Code based upon  
26 Herba and/or Kwok Shing's alleged failure to warn, within the meaning of Proposition 65, about  
27 exposure to lead, mercury and/or arsenic contained in any of the Products sold on or before the  
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1 entry of this Consent Judgment.

2           **7.2 Release of Liability of AYS.** Herba and Kwok Shing waive all rights to institute  
3 any form of legal action against AYS, its officers, directors, attorneys and representatives (the  
4 "AYS Releasees") for all actions or statements made or undertaken by the AYS Releasees in the  
5 course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 et seq.  
6 against Herba and Kwok Shing.

7 **8. CONSENT JUDGMENT**

8           **8.1 Consent Judgment.** Within thirty-five (35) days of the Execution Date of this  
9 Consent Judgment, the Parties shall submit this Consent Judgment to be approved by the San  
10 Francisco Superior Court pursuant to California Code of Civil Procedure §664.6. Simultaneously  
11 with the Parties' execution of this Consent Judgment, the Parties shall execute a stipulation  
12 allowing AYS to file a First Amended Complaint to reflect the expanded scope of this action as a  
13 result of the April 12, 2001 Notice of Violation and dismissing with prejudice the Third Cause of  
14 Action set forth in the original complaint. AYS shall file such First Amended Complaint prior to  
15 the Entry of Judgment in this action and after June 12, 2001, attaching a copy of the First  
16 Amended Complaint hereto as Exhibit E.

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

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

**10. ENFORCEMENT AND MODIFICATION**

**10.1 Enforcement and Stipulated Civil Penalties.** In the event that a dispute arises with respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer within 10 days of receiving written notice of an alleged violation of Paragraph 3.1. In the event the Parties cannot resolve the dispute, this Consent Judgment may be enforced pursuant to Code of Civil Procedure §664.6 or any other valid provision of law. The prevailing party in any dispute regarding compliance with the terms of this Consent Judgment shall be awarded its reasonable fees and costs incurred, in addition to any other relief otherwise ordered by the Court, including but not limited to civil penalties assessed pursuant to Paragraph 3.1 herein.

**10.2 Modification of Judgment - Grounds.** The Parties acknowledge that new toxicological information or exposure assessments concerning hazardous substances are continuously becoming available, and that statutory and regulatory standards applicable to the Products may evolve in the future. Accordingly, the Parties agree that either Party may elect to file a motion pursuant to §664.6 of the California Code of Civil Procedure, and under the conditions set forth below, move the Court for modification of the warning requirement set forth in Paragraph 2 on the grounds that they conflict with the applicable law or science concerning the Products.

**10.3 Modification of Judgment – Procedure.** In the spirit of cooperation and in the interests of minimizing the investigative, expert and attorneys’ fees and costs associated with such a motion, the Parties agree to meet and confer in good faith as follows. Prior to filing a motion pursuant to subsection 10.2 herein, the Party seeking to modify the judgment first provide the non-moving Party and the California Attorney General’s Office with any legal or scientific data upon which the motion would rely. The non-moving party and the California Attorney

1 General's Office shall be allowed a period of forty-five (45) days to review that data and provide  
2 the moving party with its formal written response (the Attorney General's Office's failure to  
3 respond to this submission shall not be construed in any manner to reflect any particular view, on  
4 the part of the Attorney General's Office, of this Consent Judgment or of the applicable law or  
5 science). The Parties shall then meet and confer within ten (10) days of the non-moving party's  
6 written response. If, after meeting and conferring, the moving party elects to proceed with a  
7 motion to amend this judgment, it may do so with proper notice to AYS and the Attorney  
8 General's Office as required under the California Code of Civil Procedure. Such a motion may  
9 be accompanied by scientific data, studies, written declarations, live testimony or discovery  
10 responses.

11 **10.4 Modification of Judgment – Product Exemption As Additional Grounds.**

12 Settling Defendants shall also be entitled to seek a modification of this Consent Judgment on the  
13 additional ground that a Product has been reformulated or otherwise modified such that it does  
14 not require a warning under Proposition 65. In seeking such a modification of this judgment, the  
15 burden shall rest on Settling Defendants to adduce clear and convincing evidence that the  
16 modification is warranted as a matter of law. Settling Defendants shall produce, as part of their  
17 obligation to meet and confer pursuant to subsection 10.3 herein, test results from at least three  
18 different manufacturing batches of the Product, each batch manufactured at least one month apart  
19 from any other, conducted by an EPA-accredited laboratory using inductively coupled plasma-  
20 mass spectrometry. Any such motion under this subsection shall comply with the procedural  
21 requirements of subsection 10.3 herein.

22 **11. GOVERNING LAW**

23 **11.1 Governing Law.** The terms of this Agreement shall be governed by the laws of  
24 the State of California.

25 **12. NOTICES**

26 **12.1 Notices.** All correspondence and notices required to be provided under this  
27 Agreement shall be in writing and shall be sent by first class registered or certified mail addressed  
28

llc

1 as follows:

2 All correspondence to AYS shall be mailed to:

3  
4 Attn: Lawrence E. Fahn, Executive Director  
5 As You Sow  
6 540 Pacific Avenue  
7 San Francisco, CA 94133

8 With a copy to:

9  
10 Andrew L. Packard  
11 The Law Offices of Andrew L. Packard  
12 294 Page Street  
13 San Francisco, CA 94102

14 All correspondence to Herba or Kwok Shing shall be mailed to:

15  
16 Attn: David Cheung, President  
17 Kwok Shing Import-Export, Inc.  
18 1818 Harrison Street  
19 San Francisco, CA 94103

20 With a copy to:

21  
22 Carol Brophy, Esq.  
23 Foley & Lardner  
24 1 Maritime Plaza, 6<sup>th</sup> Floor  
25 San Francisco, CA 94111

26 **13. INTEGRATION AND MODIFICATION**

27 **13.1 Integration & Modification.** This Agreement, together with the Exhibits hereto  
28 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.

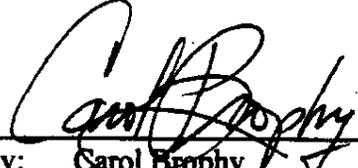
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**15. AUTHORIZATION**

**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: May 25, 2001

  
By: Carol Brophy  
Counsel for Defendants Herba Enterprise, Inc. and Kwok Shing Import-Export, Inc.

DATE: \_\_\_\_\_

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

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**15. AUTHORIZATION**

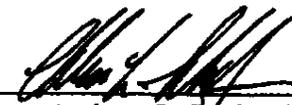
**15.1 Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

APPROVED AS TO FORM:

DATE: \_\_\_\_\_

\_\_\_\_\_  
By: Carol Brophy  
Counsel for Defendants Herba Enterprise, Inc. and  
Kwok-Shing Import-Export, Inc.

DATE: May 30, 2001

  
\_\_\_\_\_  
By: Andrew L. Beckard  
Counsel for Plaintiff As You Sow

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IT IS SO STIPULATED:

DATE: 5/24/2001.

  
\_\_\_\_\_  
David Cheung  
President  
HERBA ENTERPRISE, INC.  
KWOK SHING IMPORT-EXPORT

DATE: \_\_\_\_\_

\_\_\_\_\_  
Lawrence E. Fahn  
Executive Director  
AS YOU SOW

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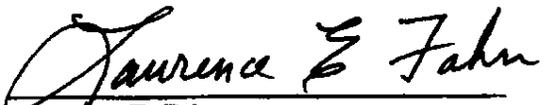
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IT IS SO STIPULATED:

DATE: \_\_\_\_\_

\_\_\_\_\_  
David Cheung  
President  
HERBA ENTERPRISE, INC.  
KWOK-SHING IMPORT-EXPORT

DATE: 5/25/2001

  
\_\_\_\_\_  
Lawrence E. Fahn  
Executive Director  
AS YOU SOW

1 IT IS SO ORDERED:  
2

3  
4 DATE: JUL 20 2001

RONALD E. OUIDACHWAY

5 By: Judge of the Superior Court

6 **RESIDING JUDGE**

7  
8 **EXHIBIT A**

9 [Product List, formatted as follows:  
10 Products Covered By This Agreement:  
11 (a) Traditional Patent Medicines  
12 (b) Other Covered Products]

13 **EXHIBIT B**

14 [3 NOVs]

15 **EXHIBIT C**

16 [exemplar warning]

17 **EXHIBIT D**

18 [verbatim language of the Notification Letter]

19 **EXHIBIT E**

20 [First Amended Complaint]

21 **EXHIBIT F**

22 [Proof Of Service on AG]  
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**EXHIBIT A**

## Exhibit A

### Traditional Patent Medicines

GEJIE  
GEJIE DA BU WAN  
CHINA MANGNAN

HUATUO FUYANJING  
HUATUO YANJIAN NING  
HUATUO JEISHITONG  
HUATO FUFANG BANLANGGEN  
HUATUO FENGSHI LINGPIAN  
HUATUO GYNOSTEMMA PENTAPHYLL  
HUATUO PE MIN KAN WAN  
TIEN CHI TABLETS (STEAMED)  
TEIN CHI TABLETS (RAW)

JIAN WEI BAO

GUZHI ZENGSHENG WAN  
FANGENGTONGSHEN WAN  
SHUGANJIAN WEI WAN  
LONGDAN XIE GAN WAN  
XIANG SHAN YANG WEI WAN

NAN BAO  
KWEI LING CHI

TZEPAO SANPIEN EXTRACT

BAI FENG WAN

ANSHENBUNAO PIAN  
BI YAN PIAN

YUNNAN BAIYAO CAPSULES  
TIEN CHI TABLETS (STEAMED)  
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WUCHA SENG TABLET  
PANAX GINSENG

SE TANG PIAN  
DANG GUI TABLET  
SUANZAOREN  
FARGELIN  
CHUAN XIN LIAN  
QIAN LIE TONG TABLET  
RUHE SANIE TABLET  
BISHU SHI TABLET  
ZHANG YANG MING  
TIAO JING YIMU TABLET  
GU XIAN TABLET  
YIN QIAO PIAN  
GAN MAO LING TABLET  
PING WEI PIAN  
LIU JUN ZI TABLET  
FU KE AN TABLET

GE TIE DABUWAN  
BANTU WAN  
YUAN HU  
DING CHUAN WAN  
HERBA SACRANDRA EXTRACT  
YANG XUE SHENG FA JIAONANG

PING CHUAN PILL  
HERBA AGASTACHES

PEARL POWDER  
LONG FENG BAO  
FU ZHEN DAN  
GAN MAO LING TABLET  
PAN LAN KEN  
ORANGE PEEL POWDER  
FRITILLARY POWDER  
HUATUO ZAIZAO PILLS  
SHINSHYUE DAN  
QS SIFANG WEI PIAN

CURING WAN  
ANCHUANG PIAN  
SEVEN NATURAL HERBS BEVERAGE

ZHUANG YAO JIAN SHEN WAN  
ZHUI FENG SU HE WAN  
FU ZI LI ZHONG WAN

WU JIN WAN  
YANG XIN NING SHEN WAN  
WU JI BAI FENG WAN  
SCHEFFLER ROOT EXTRACT

MAODUNG CHING  
KEEP FIT REDUCE FAT CAPSULE

SHU KAN WAN  
DA HUO LU DAN  
HAN BAO GAN MAO TUNG  
GENGNIAN AN  
ZHISOU DING CHUAN

YINCHIAO CHIEH TU PIEN  
WUCHI PAIFENG WAN  
HEI WUCHIPAIFENG WAN  
CHIEN CHIN CHIH TAI WAN  
YIN CHIAO CHIEH TU HERBAL EXTRACT  
HUANG LIAN SHANG CHING PIEN  
CHING FEI YI HUO  
SHIH SAN TAI PAO WAN  
CORDYCEPS

SANHUANG PIAN  
LIEN CHIAO PAI TU PIEN  
SEA HORSE BU SHEN WAN  
LI FEI  
HUA HSIANG CHENG CHI PIEN  
FRITILLARIA EXTRACT

### **Other Covered Products**

ABRUS FRUSTUS LOSUS  
ABUTILI  
ACALYPHAE  
ACANTHOPANACIS  
ACHYRNATHIS  
ACONITIA  
ACORI GRAMINEI  
ACRONYCHIAE  
ACTINOLITUM  
ADENOPHORAE  
ADENOSMAE GLUTINOSI  
AGASTACHIS POGOSTEMI  
AGRIMONIAE

AILANTHUS ALTISSIMA  
AKABIAE  
ALBIZZIAE  
ALFAZEMA  
ALISMATIS  
ALPINIAE  
ALUMEN  
AMPELOPSIS ACONITIFOLIAE  
ANDROGRAPHITIS  
ANEMARRHENAE  
ANEMONES  
ANGELICAE  
ANGIOPTERIDIS  
ARCTII  
ARDISIAE GIGANTIFOLIA  
ARISAEMATIS REFINED  
ARISTOLOCHIAE  
ARTEMISIAE  
ASAFETIDA  
ASARI CUM RADICE  
ASPARAGI  
ASPONGOPUS  
ASTERIS  
ASTERISCUS PSEUDOSCIAENAE  
ASTRAGALI  
ATALANTIA  
ATRACTYLODIS  
ATREMISIAE CAPILLARY  
ATUGAE MIPPONENSIS  
AURANTII  
AVERRHOA CARAMOBOLA  
BAMBUSAE IN TAENIAM  
BAZIONUM  
BAUHINIAE  
BEGONIA FIMBRISTI P  
BELAMCANDAE  
BERCHEMIA LINEATA  
BIDENDIS  
BIOTAE  
BLUMEAE BALSAMIFERAE  
BOMBYX BATRYTICATUS  
BORNEOLUM SYNTHETICUM  
BROUSSONETIAE  
BRUCEAE  
BUDDLEIAE  
BUPLEURI

CACUMEN BIOTAE  
CALAMINA  
CALAMITAS URINAE HOMINIS  
CALCIPTAE  
CALLICARPAE D.  
CALOMELAS  
CALYZX PERSIMMON  
CAMPHORE (PWD)  
CAMPSITIS  
CAPAPAX ANYDAE (RAW)  
CARPESIMUM ABROTANOIDES  
CARTHAMI  
CASTANEA MOLLISSIMA  
CELOSIAE CRISTATAE  
CENTELLAE  
CENTIPEDAE  
CERCIS CHINENSIS  
CHAENOMELIS SAGENARIAE  
CHAICANTHITUM  
CHEBULAE  
CHIMONANTHI  
CHINESE PARASOL  
CHRYSANTHEMI (WHITE)  
CIBOTII (BUD)  
CICADAЕ  
CIMICIFUGAE  
CINCHONAE  
CINNAMOMI  
CIRSII ET SEGETI  
CISTANCHES  
CITRI  
CLAUSENAE  
CLEISTOCALYX  
CLEMATIDIS  
CLERODENDRANTHI  
CLYPTOSTROBI PENSILIS  
CNIDII  
COLLA CORII (SHANDONG)  
CONCHA ARACE (RAW)  
CONCHA HALIOTIDIS  
CONCHA MERETRICIS  
CONCHA OSTREAE RAW  
CONCRETIO S BAMBUSAE  
COPTISIS  
CORDYCEPS SINENSIS  
CORIUM ERINACEI

CORNI  
CORNU CERVI FRAGMENTA  
CORYDALIS  
CRATOXYLI LIGUSTRINI  
CRINIS CARBONISATUS  
CROTONIS  
CUDRANIAE  
CURCULIGINIS  
CURCUMAE  
CUSCUTAE (PROCESSED)  
CYATHULAE (SHREADED)  
CYMBOPOGONIS CITRATI  
CNYANCHI  
CYNOMORII  
CYPERI (PROCESSED)  
CYRTIOSPIRI FER SINENSIS  
CYRTOMII FORTUNEI  
DACTYLICOPNODIS  
DESMODII  
DIANTHI  
DICHROAE  
DICTAMNI RADICIS  
DIOSOREAE  
DIPSACT  
DRACONIS  
DROSERA BURMANNI VAHL  
DRYFAL GLUTINOSAE  
DRYNARIAE  
ECLIPTAE  
ELEPHANTOPI  
ELSHOLTZIAE  
ENTADAE  
EPHEDRAE (BUDDLED)  
EPIMEIDII  
EQUISETI HIEMALIS  
EREMOCHLOA CILIARIS  
ERIOBOTRYAE  
ERIOCAULI  
ERYTHRINAE  
ET CACUMEN BREYNIAE F.  
ET FOLIUM PAVETTAE H.  
ET RHIZOMA LYGODII  
EUCOMMIAE SHREADED  
EUPATORII  
EUPHORBIAE  
EUPOLYPHAGA SEU STELEOPHAGA

EXPCARPIUM BENINCASAE  
FABAE  
FAECES  
FARBARAE  
FIBRAURAE  
FICI MICROCARPA  
FIRMIANAN SIMPLEX  
FLOURITUM\*  
FORSYTHIAE  
FRAXINI  
FRITILLARIAE  
GALLA RHI CHINENSIS  
GANODERMA  
GARDENIAE  
GASTRODIAE  
GECKO  
GENKWA  
GENTIANAE  
GERANTI SIBIRICI  
GLEDITSIAE  
GLEHNIAE (BOX)  
GLYCYRHIXAE  
GOSSAMPINI  
GRANATII  
GUMMI OLIBANUM  
GYMNEMATIS SYLVESTRIS  
HIBISCI  
HIRUDO  
HOMALOMENAE  
HOUTTUYNIAE  
HOVENIAE  
HYDNOCARPI  
HYOSCYAMI  
HYPERICI JAPONICI  
ILICIS  
IMPATIENTIS  
IMPERATAE  
INDIGO NATURALIS  
INULAE  
ISATIDIS  
JASMINI  
KOCHIAE  
LACCA  
LAMINARIAE  
LASIOSPHAERA  
LEMNAE

LEONURI  
LEPIDII  
LIGUSTICI  
LIMONITUM  
LINDERAE  
LINI  
LIQUIDAMBARIST  
LITHARGYRUM  
LITHOSPERMI  
LITSFA CUBEBA  
LOBELIAE RADICANTIS C  
LONICERAE JAPONICA  
LOPHATHERI  
LUMBRICUS  
LYCII  
LYCOPI  
MAGNETITUM  
MAGNOLIAE  
MAHONIAE  
MALI ASIATICAE (PWD)  
MALI HALLIANAE  
MALLOTI APELTAE  
MARGARITA  
MASSA FERMENTA  
MEDULLA  
MELICAE  
MELODINI  
MENTHAE  
MESONAE  
MICROCOTIS (BUDDLED)  
MILLETTIA  
MIMOSA PUDICA  
MIRABILITUM DEPUTATUM  
MOGHANIA PHILIPPINENSIS  
MOMORDICAE  
MORI  
MOSLAE CAVALERIEI  
MOUTAN RADICIS  
MUME  
MUSCOVITUM  
MYRRHA  
NARCISSUS  
NATRII SULFAS EXSICCATUS  
NELUMBINIS  
NEPENTHES  
NIDUS VESPAE

NOTOPTERYGII  
OCHERUM RUBRUM (RAW)  
OLDENLANDIAE  
OLOCUS ROTUNDAE  
OMPHALIA LAPIDESCENS (SLICED)  
OOTHECA MANTIDIS  
OPHICALCITUM  
OPHIOPOGONIS  
ORIGANI  
OROXYLI INDICUM  
OSBECKIAE CHINENSIS  
OSHA  
OSMATHIS FRAGRANTIS  
PAEONIAE  
PALIURI RAMOSISSIMI  
PANAX GENSENG  
PERILLAE  
PERIOSTRACUM SERPENTIS  
PERIPLOCAE RADICIS  
PERISTROPHIS ROXBUR  
PERSICAE (NO SKIN)  
PETIOLUS NELUMBINIS  
PEUCEDANI  
PHELLODENDRI (SLICED)  
PHLOGOPITUM (PWD)  
PHRAGMITIS  
PHYLLANTHUS URINARIA  
PHYSALIS PERUVIANA  
PHYTOLACCAE  
PICRORRHIZAE  
PINELLIAE  
PINI  
PIPERIS  
PLANTAGINIS  
PLASTRUM TESTUDINIS (RAW)  
PLATTYCODI  
PLUMERIAE RUBRA  
PLUMULA NELUMBINIS  
PODOCARPI MACROPHILLY  
POLLEN TYPHAE  
POLYGALAE  
POLYGONATI  
POLYGONI  
POLYPORUS  
POMEGRANATE  
PORTA COCOS (CURLED)

PORTULACAE  
PRINSEPIAE  
PSEUDONGINSENG  
PSEUDOSTELLARIAE  
PSORALEAE  
PSYCHOTRIA  
PTERIS MULTIFIDA  
PTEROPODIDAE  
PTEROSPERMI  
PULSATILLAE  
PULVIS FUMI CARBONISATI  
PUMEX  
PYCNOSTELMAE  
PYRITUM  
PYROLUSITUM  
PYRROSIAE  
QUARTZ ALBUM  
QUERCUS INFECTORIA  
QUISQUALIS  
RANDIAE SINENSIS  
RANUNCULI TERNATI  
RAPHANI  
RECEPTACULUM NELUMBINIS  
REHMANNIAE  
RESINA GARCINIAE  
RETINERVUS LUFFAE  
RHAPONTICI  
RHEI  
RHODODENDRI  
RHODOMYRTUS TOMENTOSA  
RICINI  
ROSAE RUGOSAE  
RUBI  
RUMICIS JAPONICA  
RUNGIA PECTINATA  
SABIAE JAPONICAE  
SAL PRAEWPARATUM  
SALVIAE MILT.  
SANGUIS DRACONISM  
SANGUISORBAE  
SANTALI ALBI  
SAPINDI  
SAPPAN  
SARGASSUM SEAGRASS  
SARGENTODOXAE CUNEATA  
SAUROPUS ROSTRATUS, (BD)

SAUSSUREAE  
SCHEFFLERAE  
SCHIZANDRAE  
SCHIZONEPETAE  
SCHIZOPHRAGMATIS  
SCOLOPENDRA  
SCORPION  
SCROPHULARIAE  
SCUTELLARIAE  
SELAGINELLA  
SELENITUM  
SEMIAQUILEGIAE  
SENECIO SCANDENS  
SENNAE  
SIEGESBECKIAE  
SILERIS  
SINAPIS ALBAE  
SINOMENII  
SMILACIS  
SOJAE PRAEPARATUM  
SOLANI  
SOPHORAE  
SPARGANII  
SPATHOLOBI  
SPERANSKIA  
PRUNELLAE  
SPORA LYGODII  
STALACTITUM  
STAMEN NELUMBINIS  
STELLARIAE DICHOTOMAE  
STEMONAE  
STEPHANIAE  
STERCULIAE SCAPHIGERAE  
STRYCHNOS RAW  
SUCCINUM  
SULFUR  
TALCUM  
TARAXACI CUM RADICE  
TERMINALIAE IMMATURUS  
TERRA FLAVA USTA  
THIASPI  
TINESPORA SINSSENSIS  
TOONAE SINENSIS RADICIS  
TOSENDAN  
TORREYAE  
TRACHELOSPERMI

TRACHYCARPI (CHARCOAL)  
TRIBULI  
TRICHOSANTHIS  
TRIGONELLAE  
TRIPTERYGII WILFORDII  
TUBOCAPSICI ANOMALI  
ULMI PUMILAE  
UMBILICARIA ESCULENTA  
UNCARIAE CUM UNCIS  
URINAE DEPOSITUM P  
VACCARIAE  
VASCULAR AURANTII  
VENTILAGO LEIOCARPA  
VERATRI NIGRI  
VERBENNAE  
VIOLAE  
VISCIS SEULORANTHI  
VITICIS  
XANTHII  
XYLOCOPA DISSIMILIS  
ZANTHOXYLUM NITIDUM  
ZEDOARIAE  
ZIZYPHY SPINOSAE

GINKGO BILOBA EXTRACT  
RHODODENDRON EXTRACT  
WU CHA SENG EXTRACT  
ASTRAGALI EXTRACT  
DEER'S TAIL EXTRACT  
PANAZ GINSENG EXTRACT  
GINSENG ROYAL JELLY  
YI WANG CHANG  
CONCENTRATED HERBAL EXTRACT

FRITILLARY & LOQUAT EXTRACT  
SAN SHEDAN CHUAN BEI LU

PANTOCRIN  
GE JIE GIN

KUDING TEA  
GUAVA TEA  
TWENTY-FOUR TEA  
GREEN TEA  
GYNOSTEMMA PENTAPHYLLUM TEA  
GINKO TEA

EUCOMMIAE TEA  
ZHUKE TEA  
LIANG CHA WANG  
SHA XI LIANG CHA

GINSENG TEA

TAN KWE GIN  
YANG YIN QING FEI  
FU FANG EJIAO JIANG  
SHO WU CHIH  
CANE & ARROW ROOT STOCK

ASTRAGALI BEVERAGE  
JIANG YA LING TEA BEVERAGE  
JIANG DAN GU CHUN TEA BEVERAGE  
LUOHANGUO BEVERAGE  
BEVERAGE OF SHANZHA  
LING ZHI BEVERAGE  
WANG LAO JI MEDICINE TEA  
SEVEN NATURAL HERBS BEVERAGE  
SHE SHE CAO BEVERAGE  
YU XING CAO JING  
FIVE FLOWERS BEVERAGE  
WATER CHESTNUT CARROT CANE & IMPERATAE BEVERAGE  
BEVERAGE OF XIA GU CAO  
BEVERAGE OF BANLANGEN  
HUAFEN BIMINGAN BEVERAGE  
INSTANT GINGER TEA  
SUANMEI TANG BEVERAGE  
GANMAO TUIRE CHONGJI  
TAN KWE NATURAL MIX HERB TEA  
HERBA ABRI FRUTICULOSI  
XIA OER KECHUANLING  
CANE & IMPERATAE BEVERAGE  
CHING PO LIANG BEVERAGE  
BEVERAGE OF LO HAN KUO ZHENZHU  
TUNGZHI TEA  
WONG LO KAT HERBAL TEA  
WONG LO KAT KAM WOO CHA  
WONG LO KAT CANE & CARROT JUICE

Herb Names in Mandarin

BAI CHA BING  
BAI GUANG KU  
DA HUAN HUN

DA LO SHA  
DI LO YE  
DUAN MAO  
E GUAN SHI  
ER XIAN DAN  
FAN LING GAN  
HAI DI PO  
HAI DI QUE  
HAI DI YE  
HOU ZI JIAO  
HUANG DAN FEN  
HUANG DOU JUAN  
JI HONG TAI  
JI MENG DANG  
JIU HIAN QI  
LIAO DIAO ZHEN  
LOH SIN ZI  
MAI OU FEN  
QING TONG FEN  
SHI SHANG XIANG  
SONG MEI  
TIAN LOU YE  
WUDUONIAN GEN PIAN  
XIAN LAN  
XIAO LO SHA  
XIAO YAN  
ZHI KUI ZI  
ZHU MA GEN  
ZOU MA QIAN

CHING FEI YI HUO HERBAL EXTRACT  
CURING PILL  
FAR GE LIN HIGH STRENGTH  
FENGSHI LING PIAN  
FU KE AN  
FUFANG BANGLANGAN PIAN  
FUNZHENG DAN  
FUYANJING  
GE JEI DA BU WAN  
HUATUAO GYNOSTEMMA PENTAPHYLLUM  
HUATUO FU FANG BANLANGEN PIAN  
HUATUO FU YAN JUNG  
HUATUO JIE YAN JING  
HUO HSIAN CHENG CHI PIEN  
JIANG ZHI JIAN FEI WAN  
JIESHITONG

LIUJUNZI  
PANAX GINSENG CAPSULES  
PING WEI TABLET  
PINGWEI  
QX SIFANG WEI PIAN  
SANSLEDAN CHUANBEI YE  
SANSLEDAN CHUANBEILU  
SE TAN PIAN  
SSII TENG TABLET  
TIAO JING BIMU  
WU CHI PAIFENG WAN (GOLDEN LILY BRAND)  
WU CHI PAIFENG WAN (HEI BRAND)  
XIAN SHAN YAN WEI WAN  
YAN JIAN NING  
YANGYIN QINGFEI  
YIN QIAO PIAN HIGH STRENGTH  
ZHANG YAN MING TABLET

**EXHIBIT B**



Tel: (415) 391-3212

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

May 19, 1999

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

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under the State of 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 you with notice that the private businesses listed on the attached Certificate of Service have been, and continue to be in violation of Proposition 65. 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 remedy these violations.

A summary of the statute and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this notice served upon the violators. The specific details of the violations which are the subject of this notice are provided below.

The businesses listed on the attached Certificate of Service manufacture, distribute, and/or market traditional Chinese medicines and/or other patent medicines. Certain traditional Chinese medicines and other patent medicines contain one or more of the following chemicals: lead and lead compounds, arsenic, and mercury and mercury compounds. The medicines subject to this notice letter, each medicine's manufacturer and/or distributor and city of origin (if known), and the specific Proposition 65 chemicals each medicine contains, are enumerated in the attached Exhibit A. Each of the businesses listed on the attached Certificate of Service manufactures, distributes, and/or markets the medicines enumerated in Exhibit A.

On February 27, 1987, lead was listed under Proposition 65 as a chemical known to the State of California to cause both male and female reproductive toxicity. On October 1, 1992, lead and lead compounds were listed under the statute as chemicals known to the state to cause cancer. On February 27, 1987 arsenic was listed under the statute as a chemical known to the state to cause cancer. On May 1, 1997 arsenic was listed under the statute as a chemical known to the state to cause reproductive toxicity. On July 1, 1990 mercury and mercury compounds were listed under the statute as chemicals known to the state to cause reproductive toxicity.

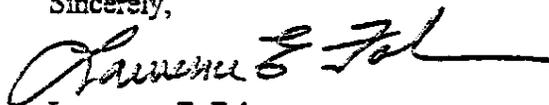


Notice of Violation of California Health & Safety §25249.5 et seq.  
May 19, 1999  
Page 2

Exposures to lead and lead compounds, arsenic, and mercury and mercury compounds from use of the traditional Chinese and other patent medicines enumerated in Exhibit A are via the ingestion, dermal absorption, and inhalation routes depending on each medicine's particular application. The businesses listed on the Certificate of Service did not and do not provide people with clear and reasonable warnings of such exposures as required by §25249.6. These violations have occurred every day since at least May 1995 and will continue every day until clear and reasonable warnings are provided.

Please direct all communications regarding this notice to AYS' counsel, Fredric Evenson, Public Interest Lawyers Group, The Presidio Building 1004, P.O. Box 29921, San Francisco, California 94129-0921. The telephone number is (415) 561-2222.

Sincerely,



Lawrence E. Fahn  
Executive Director, As You Sow

Enclosures

# EXHIBIT A

Product	Manufacturer	City	Prop. 65 Listed Chemicals
Zhenkexianyan (Shanghai Zhenlian Pian/Anti-epilepsy Tablets)	Shanghai Chinese Medicine Manufactory	Shanghai	Lead, Arsenic, Mercury**
Sihu Kan Wan	Lanchow Chinese Medicine Works	Lanchow	Arsenic
Tsai Tsao Wan	Tientsin Drug Manufactory	Tientsin	Mercury
Kwan Tung Pak Yuen Tong Pearl Hou Tsao Powder	Kwan Tung Pak Yuen Tong Head factory	Hong Kong	Lead, Arsenic
Sheng Loong Yuen (Double Dragon Pills)	Peking Tai Yuet Tong Medicine M.F.Y.	Hong Kong	Lead
Tin Tzei To Chung Pill	Shan Sai Hang Lam Medicine Manufacturer	Hong Kong	Lead
Pak Cheong Tong's Hou-Cho Powder	Pak Cheong Tong	Hong Kong	Lead
An Gung Heng Ya Wan	Beijing Tong Ren Tang	Beijing	Arsenic
Sai Lee Fan Formula (Dysentery Powder)	Wong Tai Chiu	Hong Kong	Lead
Ren Shen Zai Zao Wan	Fushan Manufactory	Kwangchow	Mercury
Sai Wo Tong "Ng Po Powder"	Sh Wo Tong	Hong Kong	Lead
Fargalin (Yang Cheng Brand)	United Pharmaceutical Manufactory	Kwangchow	Arsenic
Tortoise-Snake Antitoxic Pill	Kwangchow Pharmaceutical Industry Co.	Kwengchow	Lead
Tian Wang Bixin Wan	Ming-Kang Drug Manufactory	I-Chang	Lead, Mercury
Zhenkexiao (KIP Brand)	China National Chemicals Imp. & Exp. Corp	Kwang Tung	Lead
Superior Jin Qian Chiao Pill	China National Medicine & Health Products	Guangxi	Lead, Mercury
Vine Essence Pills	Chang An United Drug Manufactory	Beijian	Lead
Peart Powder (Yang Cheng Brand)	United Pharmaceutical Manufactory	Guangzhou	Arsenic
Chin Koo Tseh Sheng Wan	Tientsin Drug Manufactory	Tientsin	Lead, Arsenic
Niu Huang Chihsh Tu Pien (Bezoar Antitotal Tablets)	Peking Tung Jen Tang	Peking	Arsenic
Kai Yaung Pill (Trisnake Ichi-Removing Pills)	Ng Chow People's Pharmaceutical Factory	Kwang Si	Lead, Arsenic
Tin Tzei To Chung Pills (Hang Lam Brand)	Shan Sai Hang Lam Medicine Manufactory	Hong Kong	Lead
Niu Huang Xiao Yan Wan (Bezoar Antiphlogistic Pills)	Suzhou Lei Yun Shang Chinese Medicine Works	Jiangsu	Lead, Arsenic, Mercury
Lam Lee Yuan Bo Ying Tan	Shanghai Lam Lee Yuan Medical Shop	Hong Kong	Arsenic
Sen She Dan Chuan Bei Mo (Yang Cheng Brand)	United Pharmaceutical Manufactory	Canton	Arsenic
Ching Chun Bao (Anti-segling tablets)	Hangzhou Second Traditional Chinese Pharmaceutical Works	Hangzhou	Arsenic
China Tung Shueh Pike (KPIC)	Kwangchow Pharmaceutical Industry Co.	Kwangchow	Lead
Kuiseipween (Anshan Buxiao Tablets)	Chiung Lien Drug Works	Hankow	Arsenic, Mercury
Hui Chuar Tan (powder) (Yang Cheng Brand)	United Pharmaceutical Manufactory	Kwangchow	Lead
Fung Sub Wood Lock Wan (Venus)	Peking Medicine Manufactory	Peking	Arsenic
Peking Niu Heng Chien Tu Pien	Hainin 4th Pharmaceutical Manufacturing Factory	Hainin	Arsenic
Beishan's Tablets (Antelope Brand)	Guangzhou Bai Yun Shan Medicine Manufactory	Guangzhou	Lead
Liu Tung Pills (Kai Kai Yuan)	Union Medicine Works, Fatahan	Kwangtung	Lead
Carcotille Gall Bladder Expdorant Pill	Peking Medicine Factory?	Peking	Mercury
Phenformine HCl 25 mg	Laung Pui Kee Medical Factory	Hong Kong	Lead
Laung Pui Kee Caught Pill	(Tian An Leg Sheng Pharmaceutical Manufacturer)	Tian An	Lead
Neu Bao	Lanzhou Fo Ci Pharmaceutical Factory	Lanzhou	Lead, Arsenic, Mercury
Bezoar Secretive Pills	Hiya Salyaku K.K.	Osaka	Lead, Arsenic
Hiya Kijoppin	United Pharmaceutical Manufactory	Fushan	Lead, Mercury
"Chi Kiang" Brand Yan Shian Jai Jao Wan (Revival Pills)	Melzhou City Pharmaceutical Manufactory	Guangdong	Mercury
Zhong Gan Ling (Yang Cheng Brand)	Chongqing Tong Jun Gas Medicine Works	Chong Ching	Lead
Hugo's Peh-Relieving Pills	Beijing Tung Jen Tang	Beijing	Lead, Arsenic, Mercury
Tsa Chin Ting			

Xi Ling Jie Du Pian (Zhan Qiao Pai Brand)  
 Tonic Natural Herbal Rheumatic Pills  
 Fu Kwiek Zai Zao Wan (Venus)  
 Kong Zhi Zeng Sheng Pian  
 Lam Lee Yuan Hou Ching Pills  
 Sea Horse Genital Tonic Pills(Hippocampus Virility Restorative Pills)  
 Selenon Capsules  
 Manduogching Capsules  
 Compound Prescription Water Melon Frost  
 Mu Jieng Ching Hsin Wan (Greatwall Brand) (Cow Bazaar Pills)  
 Small Intellectual Herma Relieving Pills (Herma Relieving Pills)  
 Trenchel Powder Raw (Camellia Brand)  
 Yen Shun Zai Zao Wan  
 Sun Weil Pill  
 Kai Kai Pill  
 Pa'ao Ching Fang San (for infantile disorders)  
 Tao Chih Pian (for babies)  
 An Kuang Mu Jihang Wan (Bazaar Chest-Functioning Pills)  
 Sha Hse Pills  
 Jienachuehwan Wan  
 Suprator Quality Herma Relief Tablets  
 She Xiang Daoxin Wan  
 Li Shen Wan  
 "Chi Kiang" Brand Yen Shan Jai Jao Wan (Revival Pills)  
 Fak Yuan Tong Hou Tsao Powder  
 Viole Essence Pill  
 Jheng Ya Pian (Peacock Brand)  
 Mu-Huang Chien-Ti-Yien  
 Anney Fu Shin Tan  
 Tai Luo Lo Tan  
 Tai Ching Dan  
 Aunglin Tablets  
 Hong She  
 Dai Hio Luo Dan  
 Heng Lao Hwan  
 Gan Bi Ning  
 Dan Shen Tableco  
 Ethano Nasal Spray  
 Yen For Powder  
 Guayuh Siale Jiaonang  
 Chui Fong Hui Hsueh Pian (Hsiang Yang Brand)  
 Chia Wei Hsiang Len Pian (Racemose & Capitate Tablets)  
 Heng Xiu Wan  
 Chihelinton (Ja-Se-Toon Pill)  
 De Witt's Kidney & Bladder pill  
 Sen Mee Pian (The Antelope-Horn Influenza Tablet)  
 Jiguroo Wan  
 Ten Wang Pui Hsin Tan

Tehnan People's Medicine Works (Long Ling Pharmaceutical Factory)	Tehnan	Arsenic Lead
China National Chemicals Imp. & Exp. Corp United Pharmaceutical Manufactory	Szechuan Jien Fushan	Arsenic Mercury Mercury
Hong Kong Shanghai Lam Lee Yuen Medical Shop Tienjin Lanteng Drug Manufactory	Hong Kong Tienjin	Arsenic, Mercury Lead
China National Chemicals Imp. & Exp. Corp China National Medicines and Health Products Imp & Exp Corp Tientsin Drug Manufactory	Shantung Guangzhou Guangxi Tientsin	Mercury Lead Arsenic, Mercury Lead, Arsenic, Mercury
Bei Yun Shan Pharmaceutical Factory Yunnan Medicines & Health Products Imp & Exp Corp (Fieshan United Manufactory)	Guangzhou Yunnan	Arsenic Lead
Yeung Ng Tong Medical Manufactory Ltd. Hanyang Pharmaceutical Works United Pharmaceutical Manufactory	Canton Hong Kong Hanyang Kwangchow	Lead, Mercury Arsenic Lead Arsenic
Tientsin Drug Manufactory Beijing Tongren Tang Mia Pak Leung Co., Ltd.	Tientsin Beijing Hong Kong Shan Dong	Arsenic Lead, Mercury Lead, Arsenic, Mercury Lead, Mercury
Lin Ching Zhong Yao Chang Kwangchow Pharmaceutical Industry Corp. Shanghai Chinese Medicine Manufactory Shanghai Chinese Medicine Works United Pharmaceutical Manufactory	Kwangchow Shanghai Shanghai Fushan Hong Kong	Lead Lead, Arsenic, Mercury Lead, Mercury Lead, Arsenic Lead, Mercury
Kwan Tung Pak Yuen Tong Main Factory (Chang On United Pharmaceutical Factory) China National Native Produce & Animal By-Products Peking Medicine Manufactory	Peking Hong Kong Peking	Lead Lead, Arsenic Lead
China National Native Produce & Animal By-products I & E Corp. Beijing Tung Jen Tang (Fu Shan Pharmaceutical Factory) China National Medicines and Health Products Imp & Exp Corp Chung Len Drug Works Tientsin Drug Manufactory	Hopel Branch Peking Fukien Beijing Kwangchow Beijing Wuhan Tientsin	Mercury Arsenic Mercury Lead, Arsenic, Mercury Mercury Mercury Lead Lead, Mercury
Szechuan Institute of Chinese Medicine Shanghai Chinese Medicine Works Lau Koon Hung Medicine Manufacture Wong Tai Chiu Medicine Manufactory (King Gou Tong Medicine Manufactory) Siping Pharmaceutical Works Peking Pharmaceutical Manufactory Mia-Kang Drug Manufactory Ichonglai Pharmaceutical Co., Ltd (Yi Chung Tai Medical Manufactory)	Szechuan Shanghai Hong Kong Hong Kong Kwangchow Jilin Peking Yi-Chang Taksien Lumpur	Lead, Mercury Lead, Mercury Mercury Lead Arsenic Arsenic, Mercury Arsenic Lead, Mercury Mercury Lead
De Witt's Pill Sakti Pingyang Tientsin Drug Manufactory Yulin Drug Manufactory Lancow Chinese Medicine Works	Tientsin Kwang Si Lanchow	Mercury Lead Mercury



## 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 May 19, 1999, I served the following documents:

- Letter from Fredric Evenson dated May 19, 1999
- 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 parties 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:

Herba Enterprises, Inc.  
David S. Cheung, President  
617 Tenth Avenue  
San Francisco, CA 94118

On May 19, 1999, I served the following document(s):

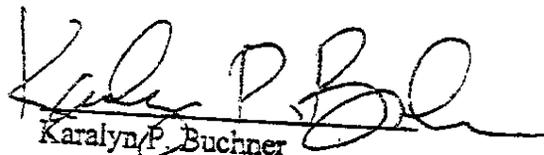
- Notice of Violation of California Health & Safety Code §25249.5 et seq., including Exhibit A

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 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 May 19, 1999, at San Francisco, California.

  
Karalyn P. Buchner

## 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.

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- Letter from Fredric Evenson dated May 19, 1999
- 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 parties 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:

Kwok Shing Import Export, Inc.  
David Cheung, President  
1818 Harrison Street  
San Francisco, CA 94103

On May 19, 1999, I served the following document(s):

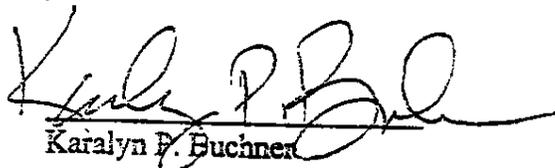
- Notice of Violation of California Health & Safety Code §25249.5 et seq., including Exhibit A

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 a United States Postal Service Office for delivery by Certified Mail:

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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 May 19, 1999, at San Francisco, California.

  
Karalyn P. Buchner



Tel: (415) 391-3212

A Foundation Planting Seeds for Social Change

Fax: (415) 391-3243

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

June 29, 2000

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

Dear Mr. Cheung 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 **KWOK SHING IMPORT-EXPORT, INC. ("KWOK SHING")**. These violations involve lead, lead compounds, mercury, mercury compounds and arsenic, found in the type of consumer products described below. 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.

The products covered by this notice are traditional patent medicines that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by **KWOK SHING**, including, but not limited to: Nan Bao, Bi Yan Pian, Fritillaria Extract, and High Strength Far Go Lin.

Notice of Violation of California Health & Safety Code §25249.5 et seq.

June 29, 2000

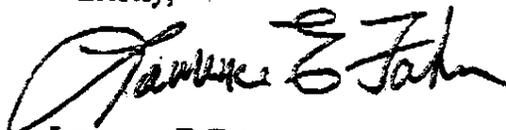
Page 2

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 June 30, 1996, and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products. This notice of violation supplements the previous notice issued by AYS against KWOK SHING on May 19, 1999.

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

Sincerely,



Lawrence E. Fabn  
Executive Director

Enclosure

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 June 29, 2000, 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 parties 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:

Kwok Shing Import Export, Inc.  
David S. Cheung, President  
1313 Harrison Street  
San Francisco, CA 94103

On June 29, 2000, I served the following document(s):

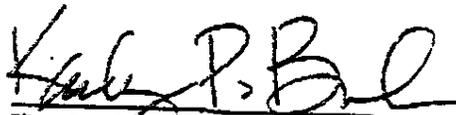
- Notice of Violation of California Health & Safety Code §25249.5 et seq., including Exhibit A

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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 June 29, 1999, at San Francisco, California.

  
Karalyn Y. Buchner



# As You Sow

Tel: (415) 391-3212

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

June 29, 2000

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

Dear Mr. Cheung 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 **HERBA ENTERPRISE, INC.** ("HERBA"). These violations involve lead, lead compounds, mercury, mercury compounds and arsenic, found in the type of consumer products described below. 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.

The products covered by this notice are traditional patent medicines that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by HERBA, including, but not limited to: Nan Bao, Bi Yan Pian, Fritillaria Extract, and High Strength Far Ge Lin.

Notice of Violation of California Health & Safety Code §25249.5 et seq.

June 29, 2000

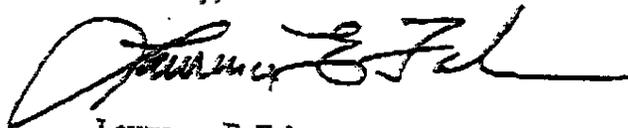
Page 2

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 June 30, 1996, and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products. This notice of violation supplements the previous notice issued by AYS against HERBA on May 19, 1999.

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

Sincerely,



Lawrence E. Fahn  
Executive Director

Enclosure

## 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 June 29, 2000, 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 parties 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:

Herba Enterprise, Inc.  
David S. Cheung, President  
617 Tenth Avenue  
San Francisco, CA 94118

On June 29, 2000, I served the following document(s):

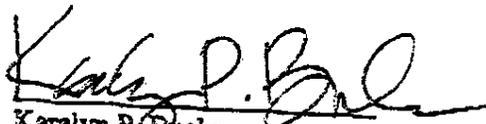
- Notice of Violation of California Health & Safety Code §25249.5 et seq., including Exhibit A

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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 June 29, 2000, at San Francisco, California.

  
Karalyn P. Buchner



# As You Sow

Tel: (415) 391-3212

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 12, 2001

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

Dear Mr. Cheung 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 violators. The specific details of the violations that are the subject of this notice are provided below.

The name of the violators covered by this notice are HERBA ENTERPRISE, INC. and KWOK SHING IMPORT-EXPORT, INC. These violations involve cadmium, cadmium compounds, lead, lead compounds, mercury, mercury compounds and arsenic found in the specific types of consumer products described below and in Exhibit A hereto. 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. 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. 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 herbals 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 the above-listed violators.

April 12, 2001

Page 2

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."

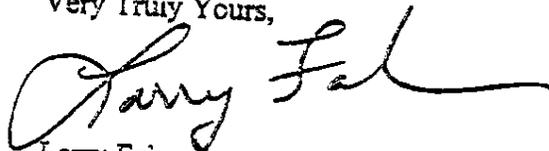
The consumer exposures that are the subject of this notice have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or dermal contact, depending on each medicine's particular application. The occupational exposures that are the subject of this notice have occurred and continue to occur primarily through inhalation and dermal contact, but also may occur through ingestion. The occupational exposures that are the subject of this notice have occurred and continue to occur at the violators' facility located at 1313 Harrison Street, in San Francisco, California.

These ongoing violations have occurred every day since at least four years prior to the date of this notice and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products. This notice of violation supplements the previous notices of violation issued by AYS against the violators on May 19, 1999 and June 29, 2000.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

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

An Shen Bu Nao Pien  
Anchuang Pien  
Bai Fang Wan  
Ban Tu Wan  
Bi Yan Pien  
Bishu Shi Tablet  
Bu Shen Wan Sea Horse  
Chien Chin Chih Tai Wan  
China Mangnan  
Ching Fei Yi Huo Herbal Extract  
Ching Fei Yi Huo Pien  
Chuan Xin Lian  
Cordyceps  
Curing Pill  
Curing Wan Pill  
Da Huo Luo Dan  
Dang Gui Tablet  
Ding Chuan Wan  
Fang Feng Tong Shen Wan  
Far Ge Lin  
Far Ge Lin High Strength  
Fengshi Ling Pien  
Fritillaria Extract  
Fritillary and Loquat Extract  
Fritillary Powder  
Fu Ka An  
Fu Ka An Tablet  
Fu Zhen Dan  
Fu Zi Li Zhong Wan  
Fufang Banglangan Pien  
Funzhengdan  
Fuyanjing  
Gan Mao Ling Tablet  
Ge Jei Da Bu Wan  
Geng Nian An  
Guxian Tablet  
Guzhi Zeng Shen Wan  
Han Bao Gan Mao Tung  
Herba Sarcandra Extract  
Huang Lian Shang Ching Pien  
Huatao Zaizao Pills  
Huatao Gynostemma Pentaphyllum  
Huatao Feng Shi Ling Pien  
Huatao Fu Fang Banlangen Pien  
Huatao Fu Yan Jing  
Huatao Fu Yan Jung  
Huatao Gynostemma Pentaphyllum  
Huatao Jie Shi Tong  
Huatao Jie Yan Jing  
Huatao Pe Min Kan Wan  
Huatao Yan Jian Ning  
Huo Hsian Cheng Chi Pien  
Huo Hsiang Cheng Chi Pien  
Jian Wei Bao

EXHIBIT A

Jieshitong  
Kwei Ling Chi  
Lien Chiao Pai Tu Pien  
Lifei  
Liujunzi  
Liujunzi Tablet  
Long Dan Xie Gan Wan  
Long Feng Bao  
Maochungching  
Nan Bao  
Panax Ginseng  
Panax Ginseng Capsules  
Panlankan  
Pearl Powder  
Ping Chuan Pill  
Ping Wei Tablet  
Pingwei  
Qian Lie Tong Tablet  
Qx Sifang Wei Pian  
Ruhe Sanie Tablet  
San Huang Pian  
Sanshedan Chuanbei Ye  
Sanshedan Chuanbeilu  
Schefflera Root Extract  
Se Tan Pian  
Se Tang Pian  
Sea Horse Bu Shen Wan  
Shinshyue Dan  
Shu Gan Jian Wei Wan  
Shu Kan Wan  
Ssii Tang Tablet  
Suanzaoren  
Tiao Jing Bimu  
Tiao Jing Yimu Tablet  
Tienchi Tablet  
Tzepao Sanpien Extract  
Wu Chi Paifeng Wan (Golden Lily Brand)  
Wu Chi Paifeng Wan (Hei Brand)  
Wu Jin Wan  
Wuchaseng Tablet  
Xian Shan Yan Wei Wan  
Xiang Sha Yang Wei Wan  
Yan Jian Ning  
Yangxin Ningshen Wan  
Yangxue Shengfa Jiaonang  
Yangyin Qingfei  
Yin Chiao Chieh Tu Pien  
Yin Qiao Pian High Strength  
Yuan Hu  
Yunnan Baiyao  
Zhang Yan Ming  
Zhang Yan Ming Tablet  
Zhi Sou Ding Chuan Wan  
Zhuang Yao Jian Shen Wan  
Zhuang Yao Jian Shen Wan

## 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 12, 2001, I served the following documents:

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- "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:

Herba Enterprise, Inc.  
David S. Cheung, President  
617 Tenth Avenue  
San Francisco, CA 94118

On April 12, 2001, I served the following document(s):

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California Department of Justice  
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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 12, 2001, at San Francisco, California.

  
Karalyn P. Buchner

**EXHIBIT C**

**WARNING:** The use of this product will expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.  
警告：使用本品可能會使您暴露於已知對人體有致癌、致畸或對生殖系統有危害的化學品。  
化學品的影響：導致癌症和生育缺陷及其他生殖傷害。

**EXHIBIT D**

**EXHIBIT D**  
[Verbatim Notice Letter]

[HERBA/KWOK SHING LETTERHEAD and DATE]

Dear Customer:

The products you have purchased from [Kwok-Shing/Herba] contain levels of lead, arsenic and/or mercury 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 many of the products by September 1, 2001, and by which the remaining products will be sold with such warnings on or before November 1, 2001.

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 and mercury) 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](http://www.oehha.ca.gov).

Sincerely,

David Cheung, President

**EXHIBIT E**

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9 Attorneys for Plaintiff  
AS YOU SOW

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

13 AS YOU SOW, a non-profit corporation, )

14 Plaintiff, )

15 vs. )

16 HERBA ENTERPRISE, INC., KWOK- )  
17 SHING IMPORT-EXPORT, INC., and DOES )  
1 to 100, inclusive, )

18 Defendants. )

Case No. 313637

) **FIRST AMENDED COMPLAINT FOR  
) INJUNCTIVE RELIEF AND CIVIL  
) PENALTIES**

) Health & Safety Code §25249.5, *et seq.*;

) Health & Safety Code §109875, *et seq.*;

) Business & Professions Code §17200, *et seq.*;

) JURY TRIAL REQUESTED

1 Plaintiff AS YOU SOW ("AYS") brings this action in the interest of the general public  
2 and, on information and belief, hereby alleges:

3  
4 **INTRODUCTION**

5 1. This action seeks to remedy Defendants' continuing failure to warn thousands  
6 of consumers in California that they are being exposed to chemicals known to the State of  
7 California to cause cancer and/or reproductive toxicity. Defendants export, import,  
8 manufacture, package, distribute, market and/or sell herbs and herbal products, traditional  
9 patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent  
10 formulas, teas, bulk teas, liquid herbal extracts, capsules, plasters and ointments (hereinafter  
11 collectively referred to as the "PRODUCTS") containing high levels of lead, lead compounds,  
12 mercury, mercury compounds and/or arsenic, which are chemicals known to the State of  
13 California to cause cancer and/or reproductive toxicity (the "LISTED CHEMICALS"). The  
14 PRODUCTS include, but are not limited to those items identified in Exhibit "A" hereto.

15 2. The use and/or handling of the PRODUCTS causes exposures to the LISTED  
16 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe  
17 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")  
18 §25249.5, *et seq.* (also known as "Proposition 65").<sup>1</sup> Defendants have failed and continue to  
19 fail, to provide and the health hazard warnings required by Proposition 65.

20 3. Defendants' continued export, import, manufacture, packaging, distribution,  
21 marketing and/or sale of the PRODUCTS without the required health hazard warnings, causes  
22 individuals to be involuntarily and unwittingly exposed to dangerous levels of the LISTED  
23 CHEMICALS. Defendants' actions violate Proposition 65, as well as the Unfair Competition  
24 Law, Business & Professions Code ("B&P Code") §17200, *et seq.*

25  
26 <sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.

1           4.     Defendants' export, import, manufacture, distribution and/or sale of  
2 PRODUCTS containing LISTED CHEMICALS constitutes the manufacture, sale, delivery,  
3 holding, offering for sale, and/or receiving in commerce of adulterated foods in violation of the  
4 Sherman Food, Drug and Cosmetic Law, H&S Code §109875, *et seq.* ("Sherman Act") and an  
5 unlawful business practice in violation of the Unfair Competition Law, B&P Code §17200, *et*  
6 *seq.*

7           5.     Defendants' continued export, import, manufacture, packaging, distribution,  
8 marketing and/or sale of the PRODUCTS without the toxic health hazard warnings required by  
9 California law also constitute unfair business practices in violation of the Unfair Competition  
10 Law, B&P Code §17200, *et seq.* because the use and/or handling of the PRODUCTS results in  
11 thousands of daily exposures to the LISTED CHEMICALS, thereby increasing the risk of  
12 cancer and/or reproductive toxicity to individuals throughout California, and because  
13 Defendants' failure to disclose significant toxic hazards makes it impossible for consumers to  
14 readily distinguish traditional patent medicines that cause exposures to the LISTED  
15 CHEMICALS from traditional patent medicines that do not cause exposures to the LISTED  
16 CHEMICALS.

17           6.     Defendants have also in the course of their business engaged in fraudulent  
18 business acts and practices and unfair, untrue or deceptive advertising likely to deceive the  
19 public, in violation of B&P Code Sections 17200 and 17500 by making fraudulent, unfair,  
20 deceptive, untrue or misleading representations regarding the purity, safety, healthfulness and  
21 contents of the PRODUCTS on the packaging of the PRODUCTS and/or in other promotional  
22 materials.

23           7.     By this action Plaintiff seeks appropriate relief:

- 24           a.     prohibiting the continued export, import, manufacture, packaging,  
25                   distribution, marketing, and sale of the PRODUCTS in California by  
26                   Defendants without provision of clear and reasonable warnings

1 regarding the risks of cancer and/or reproductive toxicity posed by  
2 exposure to the LISTED CHEMICALS through the use and/or handling  
3 of the PRODUCTS;

4 b. prohibiting the continued export, import, manufacture, distribution, sale  
5 and advertising for sale in California of the PRODUCTS that are  
6 "adulterated foods";

7 c. prohibiting Defendants from making fraudulent, unfair, deceptive,  
8 untrue or misleading representations regarding the purity, safety,  
9 healthfulness and/or contents of the PRODUCTS;

10 d. assessing civil penalties in the amount of \$2,500 per day per violation of  
11 H&S Code §25249.6, *et seq.* to remedy Defendants' ongoing failure to  
12 provide clear and reasonable warnings to thousands of individuals that  
13 they are being exposed and continue to be exposed to LISTED  
14 CHEMICALS through the use and/or handling of the PRODUCTS;

15 e. restoring to any person in interest any money or property, real or  
16 personal, which may have been acquired by Defendants' unlawful  
17 export, import, manufacture, packaging, distribution, marketing, and/or  
18 sale of the PRODUCTS without clear and reasonable warnings  
19 regarding the risks of cancer and reproductive toxicity posed by  
20 exposure to the LISTED CHEMICALS through the use and/or handling  
21 of the PRODUCTS; by Defendants' sales of adulterated foods in  
22 violation of the Sherman Food, Drug and Cosmetic Law; and by  
23 Defendants' unfair and fraudulent business acts and practices and unfair,  
24 deceptive, untrue and/or misleading advertising, as described more fully  
25 herein below.  
26





1 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
2 part:

3 No person in the course of doing business shall knowingly and intentionally  
4 expose any individual to a chemical known to the state to cause cancer or  
5 reproductive toxicity without first giving clear and reasonable warning to such  
individual....

6 24. Proposition 65 provides that any person “violating or threatening to violate” the  
7 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7.) The  
8 phrase “threaten to violate” is defined to mean “to create a condition in which there is a  
9 substantial likelihood that a violation will occur.” (H&S Code §25249.11(e).) Violators are  
10 liable for civil penalties of “up to \$2,500 per day for each such violation.” (H&S Code  
11 §25249.7.)

12 **B. The Sherman Food, Drug and Cosmetics Law**

13 25. The Sherman Food, Drug and Cosmetics Law prohibits any person from  
14 manufacturing, selling, delivering, holding, offering for sale, receiving in commerce,  
15 delivering or proffering for delivery any food that is “adulterated” within the meaning of the  
16 Act. (H&S Code §110620, 110630.)

17 26. Traditional patent medicines are considered dietary supplements and are  
18 regulated as food under the Sherman Food, Drug and Cosmetics Law.

19 27. Food is deemed “adulterated” if it “bears or contains any poisonous or  
20 deleterious substance that may render it injurious to health of man or any other animal that may  
21 consume it” or if it “bears or contains any added poisonous or deleterious substance that is  
22 unsafe....” (H&S Code §110545, 110550.)

23 28. An “added poisonous or deleterious substance” is considered “unsafe” with  
24 respect to any food, unless there is a regulation in effect that limits the quantity and use, or  
25 intended use, of the substance to the terms prescribed by the regulation. (H&S Code §110445.)

26 ///

///



1 §12000, *et seq.*; H&S Code §25249.6, *et seq.*)

2 35. On May 1, 1997, the State of California officially listed the chemical arsenic  
3 (inorganic oxides) as a chemical known to cause reproductive toxicity. Arsenic became  
4 subject to the warning requirement one year later and was therefore subject to the "clear and  
5 reasonable" warning requirements of Proposition 65 beginning on May 1, 1998. (22 CCR  
6 §12000, *et seq.*; H&S Code §25249.6, *et seq.*)

7 36. On February 27, 1987, the State of California officially listed the chemical  
8 arsenic as a chemical known to cause cancer. Arsenic became subject to the warning  
9 requirement one year later and was therefore subject to the "clear and reasonable" warning  
10 requirements of Proposition 65 beginning on February 27, 1988. (22 CCR §12000, *et seq.*;  
11 H&S Code §25249.6, *et seq.*).

12 37. On July 1, 1990, the State of California officially listed the chemical mercury  
13 and mercury compounds as chemicals known to cause reproductive toxicity. Mercury and  
14 mercury compounds became subject to the warning requirement one year later and were  
15 therefore subject to the "clear and reasonable" warning requirements of Proposition 65  
16 beginning on July 1, 1991. (22 CCR §12000, *et seq.*; H&S Code §25249.6, *et seq.*).

17 38. Plaintiff is informed and believes, and based on such information and belief  
18 alleges, that one or more of the PRODUCTS have been sold to, handled and/or used by,  
19 individuals in California without clear and reasonable warning since the duty arose. The  
20 PRODUCTS continue to be offered for sale in California without the requisite warning  
21 information.

22 39. As a proximate result of acts by DEFENDANTS, as persons in the course of  
23 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout  
24 the State of California, including the County of San Francisco, have been exposed to the  
25 LISTED CHEMICALS without clear and reasonable warning. The individuals subject to the  
26 violative exposures include normal and foreseeable users of the PRODUCTS, as well as all  
other persons exposed to the PRODUCTS.

1           40.     At all times relevant to this action, DEFENDANTS and each of them knew or  
2 should have known, and intended that the PRODUCTS contained the LISTED CHEMICALS.

3           41.     At all times relevant to this action, DEFENDANTS and each of them,  
4 knowingly and intentionally exposed the users and/or handlers of the PRODUCTS to the  
5 LISTED CHEMICALS without first giving a clear and reasonable warning to such individuals.

6           42.     Individuals using or handling the PRODUCTS are exposed to the LISTED  
7 CHEMICALS in excess of the levels determined to cause "no observable effect" or "no  
8 significant risk", as applicable, within the meaning of H&S Code §25249.10(c).

9           43.     At all times relevant to this action, DEFENDANTS and each of them have, in  
10 the course of doing business, failed to provide individuals using and/or handling the  
11 PRODUCTS with a clear and reasonable warning that the PRODUCTS expose such  
12 individuals to the LISTED CHEMICALS.

13           44.     The PRODUCTS continue to be offered for sale in California without the  
14 requisite clear and reasonable warning.

15           45.     The PRODUCTS are "foods" within the meaning of the Sherman Act.

16           46.     The LISTED CHEMICALS are chemicals known to the State of California to  
17 cause cancer and/or reproductive toxicity and are therefore "deleterious substances" and  
18 "unsafe" within the meaning of the Sherman Act. The presence of the LISTED CHEMICALS  
19 in the PRODUCTS renders the PRODUCTS "adulterated foods" within the meaning of the  
20 Sherman Act.

21           47.     Plaintiff is informed and believes that DEFENDANTS' failure to disclose  
22 significant toxic hazards as required by law, makes it impossible for users and handlers of the  
23 PRODUCTS to readily distinguish the PRODUCTS which cause exposures to the LISTED  
24 CHEMICALS from the PRODUCTS that do not cause exposures to the LISTED  
25 CHEMICALS.

26           48.     The PRODUCTS are affirmatively promoted by DEFENDANTS as being pure,  
safe and beneficial to human health.

1           49. Plaintiff is informed and believes that the following statements on the labels of  
2 the PRODUCTS are fraudulent, unfair, deceptive, untrue and/or misleading in light of the fact  
3 that the PRODUCTS contain the LISTED CHEMICALS and are therefore unsafe for men,  
4 women and children:

5           a. On the label of "Nan Bao":

6           Natural Mix Herbs Tea

7           Ingredients: (each dose) Panax Ginseng 10.6%, Cornu Vervi Parvum 10.8%,  
8           Hippocampus 11.2%, Gelatina Nigra 11.5%, Herba Epimedii 10.6%, Testis et  
9           Penis Canitis 13.4%, Testis et Penis Equus asinis chinensis 6.5%, Radix  
10           Angelicae Sinensis 8.5%, Poria 9.4%, Cortex Ciniamomi 7.5%.

11           Caution: for man use only. Keep this product away from children.

12           b. On the label of "Bi Yan Pian":

13           Proprietary blend: Cocklebur Fruit (*Xanthium sibincum*), Magnolia Flower  
14           (*Magnolia biondii pamp*), Liquorice root (*Glycyrrhiza uralensis*), Platycodon  
15           Root (*Platycodon grandiflorum*), Angelica Root (*Angelica dahurica*),  
16           Schizonepeta herb (*Schizonepetae tenuifolia*).  
17           Other ingredients: starch, FD&C Red No. 40.

18           Suggested Use: For Adult 3 to 4 tablets each time, 2 times per day as needed.  
19           Precaution: keep this product away from children.

20           c. On the label of "Fritillaria Extract":

21           Proprietary blend: Fritillary Seed (*Fritillaria cirrhosa*), Milkwort Root (*Polygala*  
22           *tenuifolia*), Platycodon Root (*Platycodon grandiflorum*), Orange peel, Liquorice  
23           root.

24           Other ingredients: FD&C Yellow No. 5, starch and sugar

25           Direction: For adults, 3 to 6 tablets each time, 3 times a day when needed.

26           Precaution: keep this product away from children.

          d. On the label of "High Strength Far Ge Lin":

          A Dietary Supplement  
          Natural Herbs



1 them, at all times relevant to this action, and continuing through the present, have violated  
2 H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
3 individuals who use or handle the PRODUCTS to the LISTED CHEMICALS, without first  
4 providing a clear and reasonable warning to such individuals pursuant to H&S Code §25249.6  
5 and 25249.11(f).

6 54. By the above-described acts, DEFENDANTS and each of them are liable,  
7 pursuant to H&S Code §25249.7(b), for a civil penalty of up to \$2,500 per day for each  
8 unlawful exposure to a LISTED CHEMICAL from the PRODUCTS since July 17, 1997.

9 55. An action for injunctive relief under Proposition 65 is specifically authorized by  
10 H&S Code §25249.7(a).

11 56. Continuing commission by DEFENDANTS, of the acts alleged above will  
12 irreparably harm the citizens of the State of California, for which harm they have no plain,  
13 speedy, or adequate remedy at law.

14 Wherefore, Plaintiff prays judgment against DEFENDANTS, as set forth  
15 hereafter.

16 **SECOND CAUSE OF ACTION**  
17 **(Violations of the Unfair Competition Law for Unlawful Business Practices-**  
18 **Violations of Health and Safety Code §25249.5, et seq.)**

19 57. Plaintiff realleges and incorporates by reference Paragraphs 1 through 56,  
20 inclusive, as if specifically set forth herein.

21 58. At all times relevant to this action, by committing the acts alleged in this  
22 Complaint, DEFENDANTS have, in the course of doing business, engaged in unlawful  
23 business practices constituting unfair competition within the meaning B&P Code §17200, by  
24 violating H&S Code §25249.6 by knowingly and intentionally exposing consumers to the  
25 LISTED CHEMICALS in the PRODUCTS without first providing a clear and reasonable  
26 warning.

59. An action for injunctive relief and restitution under the Unfair Competition Law

1 is specifically authorized under B&P Code §17203.

2 60. Continuing commission by DEFENDANTS of the acts alleged above will  
3 irreparably harm the citizens of the State of California, for which harm they have no plain,  
4 speedy, or adequate remedy at law.

5 Wherefore, plaintiff prays judgment against DEFENDANTS, as set forth  
6 hereafter.

7 **THIRD CAUSE OF ACTION**  
8 **(Violations of the Unfair Competition Law for Unlawful Business Practices-**  
9 **Violations of the Sherman Food, Drug, and Cosmetic Law)**

10 61. Plaintiff realleges and incorporates by reference Paragraphs 1 through 60,  
11 inclusive, as if specifically set forth herein.

12 62. At all times relevant to this action, by committing the acts alleged in this  
13 Complaint, DEFENDANTS have, in the course of doing business, engaged in unlawful  
14 business practices constituting unfair competition within the meaning of B&P Code §17200, by  
15 manufacturing, selling, delivering, holding, offering for sale, and/or receiving in commerce the  
16 PRODUCTS in violation of the Sherman Act's prohibition on the manufacture, sale, delivery,  
17 holding, offering for sale, and/or receiving in commerce of adulterated foods.

18 63. An action for injunctive relief and restitution under the Unfair Competition Law  
19 is specifically authorized under B&P Code §17203.

20 64. Continuing commission by DEFENDANTS of the acts alleged above will  
21 irreparably harm the citizens of the State of California, for which harm they have no plain,  
22 speedy, or adequate remedy at law.

23 Wherefore, plaintiff prays judgment against DEFENDANTS, as set forth  
24 hereafter.

25 **FOURTH CAUSE OF ACTION**  
26 **(Violations of the Unfair Competition Law for**  
**Unfair Business Practices)**

65. Plaintiff realleges and incorporates by reference Paragraphs 1 through 64,

1 inclusive, as if specifically set forth herein.

2           66. At all times relevant to this action, by committing the acts alleged in this  
3 Complaint, DEFENDANTS have, in the course of doing business, engaged in unfair business  
4 practices and unfair competition prohibited by B&P Code §17200. DEFENDANTS' unfair  
5 acts and practices violate the public policies of the State of California, are unethical and are  
6 inimical to the rights, interest, and general welfare of the public. These acts and practices  
7 include, but are not limited, to the following:

- 8           a. exporting, importing, manufacturing, distributing, packaging, marketing  
9 and/or selling the PRODUCTS without the toxic health hazard warnings  
10 required by California law;
- 11           b. exporting, importing, manufacturing, distributing, packaging, marketing  
12 and/or selling PRODUCTS, the use and/or handling of which results in  
13 thousands of exposures to the LISTED CHEMICALS, thereby  
14 increasing the risk of cancer and/or reproductive toxicity, to individuals  
15 throughout California; and,
- 16           c. failing to disclose significant toxic hazards as required by law, thereby  
17 making it impossible for consumers of the PRODUCTS to readily  
18 distinguish traditional patent medicines that cause exposures to the  
19 LISTED CHEMICALS from traditional patent medicines that do not  
20 cause exposures to the LISTED CHEMICALS.

21           67. An action for injunctive relief and restitution under the Unfair Competition Law  
22 is specifically authorized under B&P Code §17203.

23           68. Continuing commission by DEFENDANTS of the acts alleged above will  
24 irreparably harm the citizens of the State of California, for which harm they have no plain,  
25 speedy, or adequate remedy at law.

26           Wherefore, Plaintiff prays for judgment against DEFENDANTS, as set forth  
hereafter.

1 **FIFTH CAUSE OF ACTION**

2 **(Violations of the Unfair Competition Law for**  
3 **Fraudulent Business Practices and Unfair, Deceptive, Untrue and Misleading Advertising**  
4 **in Violation of Business & Professions Code §17200 and §17500)**

5 69. Plaintiff realleges and incorporates by reference Paragraphs 1 through 68,  
6 inclusive, as if specifically set forth herein.

7 70. At all times relevant to this action, by committing the acts alleged in this  
8 Complaint, DEFENDANTS have, in the course of doing business, engaged in fraudulent  
9 business acts and practices and unfair, untrue or deceptive advertising likely to deceive the  
10 public, in violation of B&P Code Sections 17200 and 17500. These acts and practices include  
11 the making of fraudulent, unfair, deceptive, untrue or misleading representations regarding the  
12 purity, safety, healthfulness and contents of the PRODUCTS to individuals throughout  
13 California on the packaging of the PRODUCTS and/or in other promotional materials.

14 71. An action for injunctive relief and restitution under the Unfair Competition Law  
15 is specifically authorized under B&P Code §17203.

16 72. Continuing commission by DEFENDANTS of the acts alleged above will  
17 irreparably harm the citizens of the State of California, for which harm they have no plain,  
18 speedy, or adequate remedy at law.

19 Wherefore, plaintiff prays judgment against DEFENDANTS, as set forth  
20 hereafter.

21 **THE NEED FOR INJUNCTIVE RELIEF**

22 73. Plaintiff realleges and incorporates by reference Paragraphs 1 through 72,  
23 inclusive, as if specifically set forth herein.

24 74. By committing the acts alleged in this Complaint, the DEFENDANTS have  
25 caused irreparable harm for which there is no plain, speedy or adequate remedy at law. In the  
26 absence of equitable relief, DEFENDANTS will continue to create a substantial risk of  
irreparable injury by:

- a. continuing to cause consumers to be involuntarily and unwittingly exposed

1 to the LISTED CHEMICALS through the use and/or handling of the  
2 PRODUCTS;

- 3 b. causing consumers to ingest adulterated foods containing chemicals known  
4 to the State of California to cause cancer, and/or birth defects or other  
5 reproductive harm;
- 6 c. preventing consumers from distinguishing products containing LISTED  
7 CHEMICALS from products that do not contain LISTED CHEMICALS;  
8 and,
- 9 d. making fraudulent, unfair, deceptive, untrue and/or misleading  
10 representations regarding the purity, safety, healthfulness and/or contents of  
11 the PRODUCTS.

12 **DEMAND FOR JURY TRIAL**

13 75. Plaintiff demands a jury trial.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff accordingly prays for the following relief:

16 A. a preliminary and permanent injunction, pursuant to B&P Code §17203, H&S  
17 Code §25249.7(b), and H&S Code §111910, enjoining DEFENDANTS, their agents,  
18 employees, assigns and all persons acting in concert or participating with DEFENDANTS  
19 from:

- 20 (1) exporting, importing, manufacturing, packaging, distributing or selling the  
21 PRODUCTS in California without first providing a clear and reasonable  
22 warning that the user and/or handlers of the PRODUCTS are exposed,  
23 within the meaning of Proposition 65, to the LISTED CHEMICALS;
- 24 (2) exporting, importing, manufacturing, distributing, selling or advertising for  
25 sale, PRODUCTS in California that are “adulterated foods”; and,
- 26 (3) making fraudulent, unfair, deceptive, untrue or misleading representations

1 regarding the purity, safety, healthfulness and/or contents of the  
2 PRODUCTS.

3 B. an assessment of civil penalties pursuant to H&S Code §25249.7(b), against  
4 DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65 alleged  
5 herein;

6 C. restoring to any person in interest any money or property, real or personal,  
7 which may have been acquired by DEFENDANTS' unlawful export, import, manufacture,  
8 packaging, distribution, marketing, and/or sale of the PRODUCTS without clear and  
9 reasonable warnings regarding the risks of cancer and reproductive toxicity posed by exposure  
10 to the LISTED CHEMICALS through the use and/or handling of the PRODUCTS; by  
11 DEFENDANTS' sales of adulterated foods in violation of the Sherman Food, Drug and  
12 Cosmetic Law; by DEFENDANTS' unfair and fraudulent business acts and practices, as  
13 described more fully herein above; and by DEFENDANTS' unfair, deceptive, untrue and/or  
14 misleading advertising, as described more fully herein above.

15 D. an award to Plaintiff of its reasonable attorneys fees and costs of suit pursuant to  
16 Code of Civil Procedure §1021.5 and H&S Code §111910, as Plaintiff shall specify in further  
17 application to the Court; and,

18 E. such other and further relief as may be just and proper.

19 DATED: \_\_\_\_\_

Respectfully Submitted,

21 PUBLIC INTEREST LAWYERS GROUP  
22 LAW OFFICES OF ANDREW L. PACKARD

23 \_\_\_\_\_  
24 Heidi P. Poppe  
25 Attorneys for Plaintiff  
26 AS YOU SOW

**EXHIBIT F**



1 I, Heidi P. Poppe, declare as follows:

2 1. I am an attorney duly admitted to practice law before this Court and an attorney of  
3 record for Plaintiff As You Sow ("AYS") in the above-described action. The matters referred to  
4 herein are based upon my own personal knowledge and, if called as a witness, I could and would  
5 competently testify thereto.

6 2. On June 5, 2001, I sent a letter giving notice of the Proposed Consent Judgment in  
7 this matter to the California Attorney General as required by Health and Safety Code  
8 §25249.7(f). A true and correct copy of this letter is attached hereto as Exhibit A.

9 I declare under penalty of perjury that the foregoing matters are true and correct.

10 DATED: 6/5/01

LAW OFFICES OF ANDREW L. PACKARD

11  
12  
13 By: Heidi P. Poppe  
14 Heidi P. Poppe  
15 Attorneys for Plaintiff  
16 AS YOU SOW  
17  
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26

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June 5, 2001

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

Re: Notice To Attorney General of Proposition 65 Settlement:  
*As You Sow v. Herba Enterprise, et al*  
San Francisco Superior Court Case No. 313637

Dear Mr. Weil:

This firm represents Plaintiff As You Sow ("AYS") in the above-referenced Proposition 65 enforcement action against two retailers of traditional Chinese medicines. AYS and defendants Herba Enterprise, Inc. and Kwok Shing Import-Export, Inc. (collectively "Herba") have reached a settlement and have agreed to the entry of a consent judgment. Since the Attorney General has not yet adopted a specific form for reporting the terms of the settlement, a copy of the settlement agreement as to Herba is enclosed herewith, in compliance with the requirements of Health & Safety Code §25249.7(f).

Under the terms of the settlement agreement, Herba has agreed to provide clear and reasonable health hazard warnings for all products covered by the agreement. Herba has also agreed to provide information regarding the warning requirements of Proposition 65 to each of their customers who repackage the products in any fashion. In addition, Herba has agreed to make a restitutionary payment in the amount of \$60,000 to AYS, which AYS shall forward to (a) California non-profit groups, and (b) the AYS Proposition 65 Enforcement Fund to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness of the health hazards posed by toxic chemicals. Herba has agreed to pay \$5000 in civil penalties. Herba has also agreed to reimburse AYS for its reasonable investigative, expert, and legal fees and costs incurred as a result of investigating, bringing this matter to Herba's attention, and negotiating a settlement in the public interest.

Please contact the undersigned if you have any questions or concerns regarding the foregoing matters.

Respectfully Submitted,

  
Heidi P. Poppe  
Attorney for Plaintiff  
As You Sow

Enclosures

cc: Eileen Ridley, Counsel for Defendants