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8 Attorneys for Plaintiff
9 AS YOU SOW

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

12 AS YOU SOW, a non-profit corporation,

13 Plaintiff,

14 vs.

15 NATURE'S WAY PRODUCTS, INC. and
16 DOES 1 through 20, inclusive,

17 Defendants.

Case No. 422848

18 **NOTICE OF ENTRY OF ORDER**
19 **RE: MOTION TO APPROVE**
20 **PROPOSITION 65 SETTLEMENT**
21 **AND FOR ENTRY OF CONSENT**
22 **JUDGMENT**

23 Complaint filed: July 28, 2003

1 PLEASE TAKE NOTICE that on May 24, 2005, the Court in the above-referenced action
2 entered the Order attached hereto as Exhibit A and the Consent Judgment attached hereto as
3 Exhibit B.
4

5
6 DATED: May 26, 2005

Law Offices of Andrew L. Packard

7
8 

9 Andrew L. Packard

10 Michael P. Lynes

11 Attorneys for Plaintiff

12 As You Sow
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1 **PROOF OF SERVICE**

2
3 I, Justine Villanueva declare under penalty of perjury under the laws of the State of
4 California that the following is true and correct:

5 I am a citizen of the United States, over the age of 18 years of age, and am not a party to
6 the within entitled action. My business address is 294 Page Street, San Francisco, California
7 94102.

8 On May 26, 2005, I served the following document:

9 **NOTICE OF ENTRY OF ORDERS RE: MOTION TO APPROVE
10 PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT
11 JUDGMENT**

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

15 Judith M. Praitis
16 Sidley Austin Brown & Wood
17 555 West Fifth Street
18 Los Angeles, CA 90013
19 (Counsel for Nature's Way Products, Inc.)

20 Edward G. Weil
21 Deputy Attorney General
22 California Attorney General's Office
23 1515 Clay Street, 20th Floor
24 Oakland, CA 94612-1413

25 Executed on May 26, 2005, at San Francisco, California.

26


Justine Villanueva

EXHIBIT A

1 ANDREW L. PACKARD (State Bar No. 168690)
2 MICHAEL P. LYNES (State Bar No. 230462)
3 Law Offices of Andrew L. Packard
4 294 Page Street
5 San Francisco, CA 94102
6 Tel. (415) 431-2970
7 Fax. (415) 431-0410

ENDORSED
FILED
San Francisco County Superior Court

MAY 24 2005

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

8 Attorneys for Plaintiff
9 AS YOU SOW

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

12 AS YOU SOW, a non-profit corporation,

13 Plaintiff,

14 vs.

15 NATURES WAY PRODUCTS, INC., and
16 DOES 1 to 20, inclusive,

17 Defendants.

) Case No.: 422848

) **[PROPOSED] ORDER RE MOTION TO**
) **APPROVE PROPOSITION 65**
) **SETTLEMENT AND FOR ENTRY OF**
) **CONSENT JUDGMENT**

) Date: May 11, 2005
) Time: 9:30 a.m.
) Dept.: 302

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21 Plaintiff AS YOU SOW's ("AYS") Motion to Approve Proposition 65 Settlement and for
22 Entry of Consent Judgment came on for regular hearing by the Court on May 11, 2005 at 9:30
23 a.m. AYS appeared by and through its counsel, Andrew L. Packard. Defendant NATURE'S
24 WAY PRODUCTS, INC. ("NWP") appeared by and through its counsel, Judith M. Praitis. The
25 Attorney General's Office appeared by and through Supervising Deputy Attorney General
26 Edward G. Weil.

~~PROPOSED~~ ORDER RE MOTION TO
APPROVE PROPOSITION 65 SETTLEMENT
AND FOR ENTRY OF CONSENT JUDGMENT

1 After consideration of the papers submitted by the parties, and oral argument of counsel,
2 the Court makes the following findings pursuant to Health & Safety Code §25249.7(f)(4):

- 3 (a) Any warning that is required by the settlement complies with Chapter 6.6 of
4 the Health & Safety Code;
- 5 (b) the award of attorney's fees is reasonable under California law; and,
- 6 (c) the penalty amount is reasonable based on the criteria set forth in Health &
7 Safety Code §25249.7(b)(2).

8 The Court further finds that while the Attorney General raises important issues concerning the
9 settlement, these issues have been adequately addressed in the parties' [~~Proposed~~] Revised
10 Consent Judgment.

11 **IT IS THEREFORE ORDERED THAT:**

- 12 (1) Plaintiff's motion is GRANTED; and,
- 13 (2) Judgment as to NWP shall be entered in accordance with the terms of the Revised
14 Consent Judgment.
- 15

16 DATED: May 17, 2005

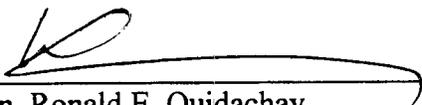
17 
18 _____
19 Hon. Ronald E. Quidachay
20 Judge of the Superior Court

EXHIBIT B

LAW OFFICES
ANDREW L. PACKARD
294 PAGE STREET SAN FRANCISCO CALIFORNIA 94102
TEL 415-431-2970 FAX 415-431-0410

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5 San Francisco, CA 94102
6 Tel. (415) 431-2970
7 Fax. (415) 431-0410
8 Attorneys for Plaintiff
9 AS YOU SOW

ENDORSED
FILED
San Francisco County Superior Court

MAY 24 2005

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 CITY AND COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

9 AS YOU SOW, a non-profit corporation,
10 Plaintiff,
11 vs.
12 NATURE'S WAY PRODUCTS, INC.
13 Defendants.

Case No. CGC-03-422848

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT NATURE'S
WAY PRODUCTS, INC.**

14
15
16 This Consent Judgment is entered into by and between AS YOU SOW, a non-profit
17 organization ("Plaintiff" or "AYS"), and Nature's Way Products, Inc. Nature's Way is a Utah
18 corporation in good standing. This Consent Judgment shall be effective upon entry (the
19 "Effective Date") by the court. Plaintiff and Defendant (each a "Party" and collectively, "the
20 Parties") agree to the terms and conditions set forth below.

21 **1. INTRODUCTION**

22 1.1 AYS is a Section 501(c)(3) non-profit foundation dedicated to, among other
23 causes, the protection of the environment, the promotion of human health, the improvement of
24 worker and consumer rights, environmental education, and corporate accountability. AYS is
25 based in San Francisco, California and incorporated under the laws of the State of California.
26 AYS is a corporation in good standing.

27 1.2 Defendant directly or indirectly sells to California consumers certain herbs, herbal
products, traditional patent medicines (defined as "herbal and patent medicines consisting of

1 single or multiple herbal ingredients, including botanical, mineral and animal products,
2 formulated into tablets, capsules, pills, powders and liquids”), bulk herbs, infusions, extracted
3 powders, tea pills, traditional pills, patent formulas, teas, bulk teas, liquid herbal extracts and/or
4 capsules (the “Products”), all of which AYS alleges contain chemicals listed by the State of
5 California as known to cause cancer and/or reproductive toxicity pursuant to the Safe Drinking
6 Water and Toxic Enforcement Act of 1986 (“Proposition 65”), California Health and Safety Code
7 § 25249.5 et seq.; Title 22, California Code of Regulations § 12000 et seq. For purposes of this
8 Consent Judgment only, each of the Products is deemed to be a “food” within the meaning of
9 Title 22, California Code of Regulations § 12501.

10 **1.3** The specific Products covered by this Consent Judgment as of the Effective Date
11 are set forth in Exhibit A hereto. Any products not set forth in Exhibit A hereto are not covered
12 by the injunctive provisions herein, except as specifically provided in Section 9: *New Products*,
13 and are not covered by the release of liability set forth in Section 6 herein.

14 **1.4** Pursuant to Health & Safety Code § 25249.8: (a) on February 27, 1987, the State
15 of California listed the chemical lead as a chemical known to cause reproductive toxicity; (b) on
16 October 1, 1992, the State of California listed the chemicals lead and lead compounds as
17 chemicals known to cause cancer; (c) on July 1, 1990 the State of California listed the chemicals
18 mercury and mercury compounds as chemicals known to cause reproductive toxicity; (d) on
19 February 27, 1987, the State of California officially listed the chemical arsenic as a chemical
20 known to cause cancer; (e) on May 1, 1997, the State of California officially listed the chemical
21 arsenic as a chemical known to cause reproductive toxicity; (f) on October 1, 1987, the State of
22 California officially listed the chemicals cadmium and cadmium compounds as chemicals known
23 to cause cancer; (g) on May 1, 1997, the State of California officially listed the chemical
24 cadmium as a chemical known to cause reproductive toxicity. For purposes of this Consent
25 Judgment, the foregoing chemicals as listed under Proposition 65 shall be the “Metals”.

26 **1.5** Beginning on May 5, 2003 and December 23, 2003, AYS began serving Defendant
27 and each of the appropriate public enforcement agencies with “60-Day Notices” that provided
Defendant and the public enforcement agencies with a notice alleging that Defendant was in

1 violation of Proposition 65 for failing to warn the purchasers and individuals using the Products
2 that the use of the Products exposes them to certain chemicals known to the State of California to
3 cause cancer and/or reproductive toxicity (each, a "60-Day Notice"). A copy of each such 60-
4 Day Notice issued to Defendant is attached hereto as Exhibit B. AYS served an additional 60-
5 Day Notice on or about February 25, 2005, a copy of which has been filed and served with AYS'
6 Motion for Approval & Entry of Consent Judgment. (See Section 7 hereinbelow). Defendant
7 stipulates for the purpose of this Consent Judgment that the 60-Day Notice or 60-Day Notices
8 sent to it are adequate to comply with Title 22, California Code of Regulations §12903.

9 **1.6** On July 28, 2003, AYS filed a Complaint (the "Action") in San Francisco Superior
10 Court, alleging violations of Proposition 65 and California Business and Professions Code
11 § 17200 et seq. AYS brings the Action in the public interest. AYS has provided 60-Day
12 Notice(s) to Defendant and the appropriate public enforcement agencies and none of the public
13 enforcement agencies has commenced and begun diligently prosecuting an action against
14 Defendant for such alleged violations.

15 **1.7** For purposes of this Consent Judgment, each Party stipulates that venue is proper
16 and that this Court has subject matter jurisdiction over the allegations contained in the Action and
17 to enter this Consent Judgment as a full and final resolution of all causes of action pled, or which
18 could have been pled based on the facts alleged in the Action. The Parties enter into this Consent
19 Judgment to settle disputed claims between them and to avoid prolonged litigation. By execution
20 of this Consent Judgment, Defendant does not admit any violations or the applicability of
21 Proposition 65 or the Business and Professions Code, or any other law or standard applicable to
22 warning or disclosure concerning the manufacture, distribution and/or sale of the Products.
23 Except for the representations made above, nothing in this Consent Judgment shall be construed
24 as an admission by Defendant or Plaintiff of any fact, issue of law, or violation of law, nor shall
25 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
26 or Plaintiff of any fact, issue of law, or violation of law.

27 **1.8** Except as expressly provided herein, nothing in this Consent Judgment shall
prejudice, waive or impair any right, remedy or defense the Parties may have in any other or

1 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
2 responsibilities, and duties of any Party to this Consent Judgment.

3 **2. INJUNCTIVE PROVISIONS**

4 **2.1 Defendant's Duty To Ascertain The Metals Content of The Products On Or**
5 **Before Sixty Days Following the Effective Date.** On or before sixty (60) days following the
6 Effective Date, Defendant shall ascertain the concentration of Metals in each of the Products as
7 follows.

8 **2.1.1 Lead, Arsenic And Cadmium Testing Protocol.** In accordance with
9 Sections 2.1.5 and 2.1.6, to ascertain a Product's concentration of lead, arsenic and cadmium,
10 respectively, Defendant shall test the Product (or rely on testing of the Product by others provided
11 it is undertaken in the manner set forth herein), using inductively coupled plasma mass
12 spectrometry ("ICP-MS") under the protocol set forth in EPA Method 6020.

13 **2.1.2 Mercury Testing Protocol.** In accordance with Sections 2.1.5 and 2.1.6,
14 to ascertain a Product's concentration of mercury, Defendant shall test the Product (or rely on
15 testing of the Product by others provided it is undertaken in the manner set forth herein) using the
16 protocol set forth in EPA Method 7471A (including, at Defendant's option, conformity with EPA
17 Method 3052), or the protocol set forth in EPA Method 7473, or the protocol set forth in EPA
18 Method 6020.

19 **2.1.3 Additional Testing Protocols.** In the event that equally or more accurate
20 testing methods are developed or identified and accepted by the scientific community as accurate
21 enough to allow for detection and quantification of any Metal to ascertain compliance under this
22 Consent Judgment, any Party shall have the right to move the court to modify this Consent
23 Judgment as set forth in Section 8 herein, to allow testing by such equally or more accurate
24 testing method in addition to the methods authorized herein.

25 **2.1.4 Approved Laboratories.** Product or raw material testing may be
26 undertaken at Defendant's in-house laboratories or by third-party testing laboratories; however,
27 all third-party laboratory testing shall be performed only at laboratories that are certified,
accredited, or registered by a federal or California state agency, including but not limited to the

1 U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, or the California
2 Department of Health Services for the purposes of administering the specific protocol used in
3 such testing. If a given agency does not certify specific protocols for testing for Metals in dietary
4 supplements, the certification, accreditation or registration customarily bestowed upon
5 laboratories testing dietary supplements or ingredients in dietary supplements for Metals in
6 accordance with that agency's standards shall be required; if no such agency standards exist
7 specifically for dietary supplements, then the standards for foods shall be required.

8 **2.1.5 Sampling Protocol For Ascertaining Metals Content.** In fulfilling its
9 duty to ascertain the concentration of each Metal in each Product, Defendant may at its option,
10 test (or rely on testing of the Product by others) Representative Samples of the finished Products,
11 or test (or rely on testing of raw materials by others) Representative Samples of each of the raw
12 materials comprising the finished Product(s). Any results relied upon must use the analytical
13 methods and sampling requirements specified herein, except that a Defendant (or a laboratory
14 conducting tests for Defendant) may modify or adjust an analytical method if necessary to ensure
15 accurate results in light of the nature, composition, quantity, or other characteristic of the test
16 specimen, the nature of the test, or the specific equipment being used to conduct the test so as to
17 enhance the quality and reliability of the test results. If Defendant (or a laboratory conducting
18 tests for Defendant) modifies or adjusts any analytical method specified in this Consent
19 Judgment, in the event of an enforcement action by AYS under this Consent Judgment contesting
20 such modification or adjustment, Defendant shall bear the burden of showing by a preponderance
21 of the evidence that the modification or adjustment was (a) necessary, appropriate and reasonable
22 under the circumstances; and (b) fully consistent with generally accepted scientific principles and
23 practices concerning analytical testing and test methods for Metals in foods, including dietary
24 supplements.

25 **2.1.6 Representative Sampling.**

26 (a) Finished Products. "Representative Sampling" as used herein shall mean with respect
27 to the testing of finished Products, any of the following, at a Defendant's option: (a) testing of
two (2) or more samples, each from a different final Product of the most recent manufacturing,

1 labeling or processing lot or batch (“Manufacturing Lot”) of that Product; or (b) testing of one (1)
2 sample from the most recent Manufacturing Lot of a Product, provided that the one sample
3 actually tested is a composite of three (3) or more samples taken from three (3) or more final
4 Products from that most recent such Manufacturing Lot of that Product. Each of the three (3) or
5 more samples taken from three (3) or more final Products must be equal to the other samples
6 (e.g., 4 capsules taken from each of three final Products, or 1 gram taken from each of three final
7 Products).

8 (b) Raw Materials. “Representative Sampling” as used herein shall mean with respect to
9 the testing of raw material, testing of one (1) sample from the most recent shipping lot received
10 by Defendant of each raw material comprising the Product, provided that the one sample actually
11 tested is a composite of three (3) or more samples from the most recent shipping lot of that raw
12 material. Each of the three (3) or more raw material samples which comprise the composite
13 sample actually tested shall be equal to the other samples.

14 (c) First Two Year’s Frequency of Sampling. During each of the two years after the
15 Effective Date, for purposes of documenting compliance with Sections 2.2, 2.4 and 9 of this
16 Consent Judgment after sixty (60) days from the Effective Date, Defendant shall conduct (or have
17 conducted on its behalf) Representative Sampling meeting the definition of either Section 2.1.6(a)
18 or 2.1.6(b), or any combination of the two, as Defendant shall elect in its sole discretion. The
19 Parties agree that Representative Sampling shall for the first two years after the Effective Date
20 mean the testing either of (1) each Manufacturing Lot of a finished Product pursuant to 2.1.6(a),
21 or (2) each raw material comprising a finished Product, or (3) any combination of the two,
22 provided Defendant has laboratory test data with respect to each Product Defendant ships for sale
23 to California between the Effective Date and the second anniversary of the Effective Date.

24 (d) Sampling Frequency After Second Anniversary of Effective Date. After the second
25 anniversary of the Effective Date, Defendant shall conduct (or have conducted on its behalf)
26 Representative Sampling on raw materials or finished Products, as the case may be, but
27 Defendant may adjust the frequency of the sampling regime set forth in Section 2.1.6(c). Any
adjustments to the sampling regime shall be sufficient to allow Defendant to continue to

1 accurately determine levels of Metals in Products or in raw materials. Any adjustments to the
2 sampling regime shall be based upon Defendant's consideration of the following factors: (i)
3 existing data, (ii) the variability of Metals levels in a raw material or in a Product, as documented
4 through testing, (iii) the predictability of the distribution of the range of Metals levels in a raw
5 material, based on prior laboratory test data, (iv) the amount of a raw material used in a finished
6 Product, and (v) other relevant considerations. In any proceeding to enforce this Consent
7 Judgment, Defendant bears the burden of showing by substantial evidence that any testing regime
8 adopted under this Section 2.1.6(d) is reasonable and is sufficient to accurately determine Metals
9 levels in raw materials or finished Products. This Section 2.1.6(d) governs the frequency of
10 sampling, and does not alter the definitions of Representative Sampling set forth in Sections
11 2.1.6(a), (b), or (c) the testing protocols set forth herein. Defendants are not limited to providing
12 only Representative Sampling data to Plaintiff in the event Plaintiff conducts compliance
13 monitoring under Section 2.1.7 or otherwise moves to enforce this Consent Judgment.

14 **2.1.7 Compliance Monitoring.** At any time following 60 days after the
15 Effective Date, AYS may request that Defendant provide, within thirty-five (35) days of the date
16 of its request, documentation supporting the sale in California of any Product without the health
17 hazard warnings specified in this Consent Judgment. For the first three years after the Effective
18 Date, such requests may be made with respect to as many as twenty-five (25) percent, annually,
19 of the number of Products listed on Defendant's then current Product list, up to a maximum of
20 thirty (30) requests in total for up to thirty (30) different Products in a year. For subsequent years
21 four and five after the Effective Date, AYS may request information on no more than ten (10)
22 percent, annually, of the number of Products listed on Defendant's then current Product list, up to
23 a maximum of twelve (12) requests in total for up to twelve (12) different Products in a year.
24 After the fifth year after the Effective Date, AYS shall not be entitled to request information
25 pursuant to this Section 2.1.7, unless a violation of this Consent Judgment previously was
26 established within the three years preceding the date of the AYS request, in which case AYS shall
27 be entitled to tender up to twelve (12) requests in total for information respecting up to twelve
(12) different Products for up to one more year after the date of the AYS request. With respect to

1 each Product for which any request under this Section 2.1.7 is made, the Defendant shall provide
2 a declaration from the persons responsible for the testing, verifying quality assurance and quality
3 control procedures, and verifying that the testing was conducted in strict accord with Section 2.1.
4 For any Product for which AYS' request for such documentation is not provided within sixty (60)
5 days of the date of the request, such Product will be deemed sold in violation of this Consent
6 Judgment as to all sales in California of that Product after the date of AYS' request through the
7 date upon which such documentation is received by AYS and therefore will be subject to the
8 provisions of Section 3.1 (Civil Penalties) herein; provided, however, that Defendant's mere
9 contesting of any assertion by AYS concerning inadequacies in the documentation produced to
10 AYS shall not, in and of itself, be deemed a violation of this Section 2.1.7. For AYS to establish
11 a violation of this Section, the documentation provided or other documentation must show that a
12 health hazard warning was required under this Consent Judgment. Violations of this Section 2.1.7
13 may be enforced as specified hereinbelow and are not exclusive of other remedies, if any,
14 available to Plaintiff.

15 **2.1.8 Limited Exemptions from Testing.** Defendant need not test (or have
16 tested on its behalf) all excipients, fillers, flavors, colors or binders ("Standardized Ingredients")
17 if it reasonably and in good faith believes such Standardized Ingredients do not contain Metals at
18 levels that might cause or contribute to a violation of this Consent Judgment. Defendant's good
19 faith belief shall be based on periodic laboratory test data, vendor certifications, or other such
20 reasonable and appropriate information including consideration of the reliability and consistency
21 of the supplier, the nature of the ingredient, the amount used and other relevant factors.
22 Defendant periodically shall monitor and evaluate such Standardized Ingredients for Metals
23 levels. In the event that AYS should move to enforce this Consent Judgment, Defendant bears
24 the burden of establishing by a preponderance of evidence that any failure to test an excipient,
25 filler, flavor, color or binder for Metals content was reasonable and in good faith, and must
26 produce all such supporting evidence in the context of the meet and confer process concerning
27 enforcement of this Consent Judgment contemplated under Section 8.1 herein. Defendant's
failure to test an excipient, filler, flavor, color or binder for Metals content, in the absence of a

1 reasonable and good faith belief that such ingredient does not contain Metals at levels that might
2 cause or contribute to a violation of this Consent Judgment, shall constitute a material breach of
3 this Consent Judgment and be subject to stipulated civil penalties as provided for herein if such
4 failure to test causes or contributes to a failure to provide a warning when required under Section
5 2.2 or causes or contributes to a violation of Section 2.4 of this Consent Judgment.

6 **2.1.9 Product or Ingredient Specifications.** On or before the date that is sixty
7 (60) days after the Effective Date, Defendant shall establish, at its option, either: (a) specifications
8 for the Metals content of all raw materials used in the Products, or (b) specifications for the
9 Metals content in finished Products. Defendant shall not use raw materials which fail to meet the
10 Metals specifications Defendant established for raw materials used in the manufacture of
11 Products. Defendant shall not ship for sale or use in California Products which fail to meet
12 Defendant's specifications for Metals content in finished Products, unless such Products meet all
13 terms of this Consent Judgment, including the warning obligations in Section 2 and Section 9.
14 Defendant may from time to time adjust specifications for raw materials or for finished Products.

15 **2.2 Provision of Clear and Reasonable Warnings.**

16 **2.2.1 On-Product Warnings.** On or before the date that is sixty (60) days
17 following the Effective Date, Defendant shall permanently cease and no longer ship for sale or
18 use in California any Products (as defined in Sections 1.2, 1.3 and 9.1) which require a warning
19 under the terms of this Consent Judgment, unless each individual Product (in the form intended
20 for sale to the end-user) bears one of the warning statements specified below on its individual unit
21 label or packaging:

22 (a) If use or consumption of the Product in accordance with Defendant's label directions
23 results in an exposure exceeding 10.0 micrograms/day of arsenic, but otherwise would not require
24 a warning under this Consent Judgment, then the warning shall state:

25 **WARNING: The use of this product will expose you to chemicals known to**
26 **the State of California to cause cancer.**

1 (b) If use or consumption of the Product in accordance with Defendant's label directions
2 results in an exposure exceeding 10.0 micrograms/day of arsenic, and exceeding any of the levels
3 set for lead, mercury, or cadmium in this Consent Judgment, then the warning shall state:

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

7 (c) If use or consumption of the Product in accordance with Defendant's label directions
8 results in an exposure that does not exceed 10.0 micrograms/day of arsenic, but that does exceed
9 any of the levels set for lead, mercury, or cadmium in this Consent Judgment, then the warning
10 shall state:

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

13 (d) The warning statement shall be prominent and displayed on the label or packaging of
14 each Product with such conspicuousness, as compared with other words, statements, or designs,
15 so as to render it likely to be read and understood by an ordinary individual prior to purchasing or
16 using the Product. The warning statement shall be printed on the label or packaging in a font size
17 no smaller than any other precautionary statements or warnings printed on the Product's label or
18 packaging.

19 **2.2.2 Additional Warnings Concerning Mail Order & Internet Sales.** If a
20 Defendant sells a Product that requires a warning under this Consent Judgment, by mail order or
21 over the Internet to a purchaser in the State of California on or after the date that is sixty (60) days
22 after the Effective Date, the following additional requirements shall apply. For such mail order
23 sales, the warning language required under this Consent Judgment shall be included in the mail
24 order catalogue, either on the same page as any order form, or on the same page(s) upon which
25 the Product's price is listed, in the same type size as the surrounding, non-heading text (this
26 requirement shall be applicable only to all catalogues printed after the Effective Date). For such
27 Internet sales, the warning language required under this Consent Judgment shall be displayed (in
the same type size as the surrounding, non-heading text) either: (a) on the same page upon which

1 the Product is displayed or referenced; (b) on the same page as any order form for any Product; or
2 (c) on the same page as the price for the Product is displayed.

3 **2.3 Exceptions To Warning Requirements.** No Product that meets each of the
4 following criteria shall require a warning pursuant to this Consent Judgment:

5 **2.3.1 For Lead Warnings, Exposure Below “No Observable Effect Level.”**

6 Use or consumption of a Product causes total daily exposure¹ to lead of less than 0.5 micrograms
7 when consumed or used in accordance with the Defendant’s label directions, excluding any
8 naturally occurring lead, as defined for purposes of this Consent Judgment in Section 2.3.2
9 (“Naturally Occurring Lead”), in such Product. Prior to shipment for sale to California
10 consumers, Defendant shall provide consumer use instructions on the label or packaging of each
11 individual Product (in the form intended for sale to the end-user). If the consumer use
12 instructions include a range of consumption levels (e.g., “take 2 to 4 tablets daily”), then for
13 purposes of compliance with Sections 2.2, 2.4, 9 and otherwise under this Consent Judgment, the
14 highest dose instructed shall be the dose.

15 **2.3.2 “Naturally Occurring” Allowance For Lead for Products Shipped for**
16 **Sale After Sixty Days Following The Effective Date.**

17 (a) Initial Naturally Occurring Lead Level. Unless a Product contains a warning in
18 compliance with this Consent Judgment, the initial Naturally Occurring Lead level in any Product
19 subject to this Consent Judgment Defendant ships for sale or use in California after the date that is
20 sixty (60) days following the Effective Date, shall not exceed a concentration that will result in
21 3.5 micrograms lead ingested/day, assuming the Product is used or consumed in accordance with
22 the Defendant’s consumer use instructions. Products where the concentration results in lead
23 levels that exceed (i) this initial 3.5 micrograms ingested level or (ii) Products which exceed any
24 future Naturally Occurring Lead level subsequently established pursuant to this Consent
25 Judgment, (plus, in either the case of (i) or (ii) an additional 0.5 micrograms Lead as allowed by
26 regulation and under Section 2.3.1), shall be subject to the warning requirements set forth in
27

¹ For purposes of this Consent Judgment only, the term “exposure” is deemed to mean
“ingestion”, consistent with Title 22, Cal. Code Regs., section 12102(i) (which defines the term
“expose” as “to cause to ingest....”).

1 Sections 2.2.1, 2.2.2, and 9 herein, unless Defendant can show by a preponderance of the
2 evidence that all lead in such Products (except 0.5 micrograms ingested in a daily dose) is
3 naturally occurring per 22 Cal. Code Reg. § 12501. If Defendant in the future elects to make this
4 showing that more than 3.5 micrograms of lead is naturally occurring, Defendant agrees to
5 provide all evidence supporting such a showing to AYS in the context of the meet and confer
6 process concerning enforcement of this Consent Judgment contemplated under Section 8.1 herein.
7 Defendant's failure to produce this information or Defendant's failure to establish to the Court
8 that lead in excess of 0.5 micrograms in a daily dose, plus Naturally Occurring Lead, is naturally
9 occurring under the criteria in 22 Cal. Code Reg. § 12501 shall constitute a material breach of this
10 Consent Judgment and be subject to stipulated civil penalties as provided for herein if a Product
11 which requires a health hazard warning under this Consent Judgment was sold in California
12 without such warning. Nothing in this Section 2.3.2 constitutes a waiver of Defendant's right to
13 establish, in accordance with the procedures set forth in Sections 2.3.2 and 8.1, that levels of
14 Metals other than lead are naturally occurring under the criteria of 22 Cal. Code Reg. § 12501.
15 The Parties agree that the initial 3.5 micrograms Naturally Occurring Lead level is the result of
16 negotiations and a review of the available information and shall be applicable to the Products
17 subject to this Consent Judgment at this time and shall have no application to other products.

18 (b) Evaluation of Future Naturally Occurring Lead Levels. In recognition of the
19 possibility that the "lowest level feasible" of Lead may change over time, the Parties agree to
20 evaluate the Naturally Occurring Lead level annually for five (5) years as set forth below.
21 Commencing January 15, 2006 and ending January 15, 2011 for each year Defendant shall tender
22 a statement of determination whether an adjustment to the Naturally Occurring Lead level can be
23 supported by substantial evidence. Such a determination respecting the Naturally Occurring Lead
24 level shall be made by Defendant in good faith and be based on Representative Sampling and
25 "Feasibility." "Feasibility" for purposes of this Consent Judgment shall mean consideration of
26 the following: (1) the availability and reliability of a supply to Defendant of raw materials in
27 question; (2) the reasonable cost to Defendant of Products or raw materials therein; (3) any
resulting unreasonable increase in cost to a Defendant to procure a Product or raw materials with

1 lower levels of lead; (4) performance characteristics, including formulation, performance, safety,
2 taste, efficacy and stability, of any raw materials or finished Product; (5) the lawfulness of
3 alternatives (no alternative shall result in a violation of law, or a breach of a standard of identity);
4 and (6) other relevant and reasonable considerations. If upon determination of either Party a
5 change is warranted, then that Party within sixty (60) days of the statement date shall proceed to
6 modify this Consent Judgment in accordance with Section 8 herein. Defendant's obligations
7 under this Section 2.3.2(b) are without prejudice to any rights of Plaintiff under Section 8 or
8 otherwise herein. If either Party seeks to modify the initial or any subsequently established
9 Naturally Occurring Lead level as defined herein, such modification shall only be effective upon
10 an order by the Court, after a noticed motion, notice of which motion shall be served on the
11 Office of the Attorney General at least forty-five (45) days prior to the hearing date, and which
12 motion shall include the information supporting the request for modification.

13 **2.3.3 Conditions Under Which "Naturally Occurring" Allowance For Lead**
14 **Applies.** For purposes of compliance with Section 2.2, Defendant shall exclude that amount of
15 lead specified in Section 2.3.2, provided Defendant has not intentionally or unintentionally added
16 any lead to a Product and Defendant has done or caused to be done all of the following: (a) used,
17 or required the manufacturer of the Product to use, "Good Manufacturing Practices," as defined in
18 Exhibit C hereto in connection with each ingredient in the Product and with the Product; (b) used
19 or, if Defendant is purchasing an ingredient used in a Product directly from the grower of that
20 ingredient, required the grower to use, in those instances where Defendant has the commercially
21 reasonable ability to do so, Good Agricultural Practices; (c) used, at all times relevant to the
22 production of the Product, quality control measures that reduce natural chemical contaminants to
23 the "lowest level currently feasible," as that phrase is used in Title 21 Code of Federal
24 Regulations, Section 110.110(c) (2001). If the United States Food & Drug Administration adopts
25 Good Manufacturing Practices ("GMPs") regulations applicable to Defendant's dietary
26 supplement manufacturing, Defendant, as of the effective date of those federal regulations, shall
27 proceed under such new regulatory GMPs in lieu of the obligations set forth on Exhibit C within
thirty (30) days of such adoption.

1 **2.3.4 Stipulated Exposure Levels Triggering Warning Requirements For**
2 **Arsenic, Cadmium and Mercury.** Prior to shipment for sale to California consumers,
3 Defendant shall provide consumer use instructions on the label or packaging of each individual
4 Product (in the form intended for sale to the end-user). If the consumer use instructions include a
5 range of consumption levels (e.g., “take 2 to 4 tablets daily”), then for purposes of compliance
6 with Sections 2.2 and 9 and otherwise under this Consent Judgment, the highest dose instructed
7 shall be the dose. For arsenic, cadmium and mercury, the health hazard warnings set forth in
8 Section 2.2.1 shall be required if use or consumption of a Product in accordance with Defendant’s
9 label directions results in an exposure exceeding any of the following levels: (a) (1) mercury and
10 mercury compounds, except inorganic mercury, 0.30 micrograms/day; (2) inorganic mercury, 3.0
11 micrograms/day; (b) cadmium, 4.10 micrograms/day; (c) arsenic, 10.0 micrograms/day. For
12 purposes of this Consent Judgment, and in the absence of knowledge to the contrary on the part of
13 Defendant, Defendant shall presume that all mercury in a Product is not inorganic mercury and
14 therefore is subject to the standard in 2.3.4(a)(1) unless Defendant, through laboratory testing and,
15 if applicable, other relevant information, establishes that a Product contains only inorganic
16 mercury, in which case that Product shall be subject to the standard in 2.3.4(a)(2). Records
17 supporting Defendant’s determination respecting inorganic mercury content in a Product shall be
18 provided to Plaintiff in accordance with Defendant’s obligations under Section 2.1.7, Section 8
19 and Section 9.1.

20 **2.4 Ban on Sales of Products Causing Exposures to Lead in Excess of 14**
21 **Micrograms Per Day.** No Product may be shipped by Defendant for sale in the State of
22 California after sixty (60) days following the Effective Date if, when used or consumed in
23 accordance with the Defendant’s label directions, it causes an exposure to lead in excess of 14
24 micrograms/day.

25 **3. CIVIL PENALTIES**

26 **3.1 Stipulated Civil Penalties For Future Violations of This Agreement.**

27 Proposition 65 provides for civil penalties of up to \$2500 per violation per day, pursuant to
California Health & Safety Code § 25249.7. In the event that after sixty (60) days following the

1 Effective Date, Defendant violates Sections 2 or 9 herein, the Parties stipulate that Defendant
2 shall be liable for a stipulated civil penalty in the amount of \$5.00 per unit item sold in violation
3 of this Consent Judgment, unless the Defendant's actual per unit sale price to the buyer was less
4 than \$5.00, in which case the stipulated penalty shall be fifty percent (50%) of the sale price
5 Defendant received from the relevant buyer for the Products at issue. Total civil penalties
6 concerning all Products sold in violation of this Consent Judgment shall not exceed \$70,000 for
7 such violations in any calendar year. Plaintiff may establish such violation(s) hereunder by a
8 preponderance of the evidence upon a duly noticed motion in the San Francisco Superior Court
9 and subject to the provisions of Section 8 herein. AYS shall remit 75% of this amount to the
10 State of California pursuant to Health & Safety Code § 25249.12(b).

11 **3.2 Civil Penalty Assessment.** Defendant shall pay a civil penalty in the amount of
12 \$45,000 to AYS, pursuant to Health & Safety Code § 25249.7(b). AYS shall remit 75% of this
13 amount to the State of California pursuant to Health & Safety Code § 25249.12(b).

14 **3.3 Payment in Lieu of Additional Civil Penalties.** Defendant shall make a payment
15 in lieu of additional penalties in the amount of \$165,000 to AYS. AYS shall forward at least one-
16 half of these funds to California non-profit groups to reduce exposures to toxic chemicals, and to
17 increase consumer, worker and community awareness of the health hazards posed by toxic
18 chemicals. Any remaining funds shall be deposited in the AYS Foundation Environmental
19 Enforcement Fund and shall be used to reduce exposures to toxic chemicals, and to increase
20 consumer, worker and community awareness of the health hazards posed by toxic chemicals. In
21 deciding among the grantee proposals, the As You Sow Board of Directors ("Board") takes into
22 consideration a number of important factors, including: (1) the nexus between the harm done in
23 the underlying case(s), and the grant program work; (2) the potential for toxics reduction,
24 prevention, remediation or education benefits to California citizens from the proposal; (3) the
25 budget requirements of the proposed grantee and the alternate funding sources available to it for
26 its project; and (4) the Board's assessment of the grantee's chances for success in its program
27 work. AYS shall ensure that all funds will be disbursed and used in accordance with AYS'

1 mission statement, articles of incorporation, and bylaws and applicable state and federal laws and
2 regulations.

3 **3.4 Penalties are not a credit.** No penalties paid herein shall be construed as a
4 credit against future claims against Defendant.

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

6 **4.1 Reimbursement of Plaintiff's Investigative, Expert and Legal Fees and Costs.**
7 Defendant shall reimburse AYS in the amount of \$105,000 for AYS' reasonable investigative,
8 expert, and legal fees and costs incurred as a result of investigating and negotiating a settlement in
9 the public interest.

10 **5. PAYMENT OBLIGATIONS**

11 **5.1** Pursuant to Sections 3.2, 3.3 and 4.1 herein, Defendant agrees to remit the total
12 amount of \$315,000 to AYS, payable to "As You Sow" (Employer Identification Number 94-
13 3169008) within fifteen (15) days of the Parties' execution of this Consent Judgment, with the
14 last signature date triggering the fifteen (15) day period (if AYS is the last signatory, this fifteen
15 (15) day period shall run from the date of transmission of facsimile notice of AYS' signature to
16 Defendant and Defendant's counsel).

17 **6. RELEASE OF LIABILITY**

18 **6.1 Release of Liability.** AYS, on its own behalf, and on behalf of the general public,
19 waives all rights to institute or participate in, directly or indirectly, any claim or form of legal
20 action against Defendant, its officers, directors, employees, agents, attorneys, representatives,
21 shareholders, parents, subsidiaries, affiliates, divisions, predecessors, successors, subdivisions,
22 downstream distributors, downstream retailers, downstream customers, and upstream suppliers
23 (including manufacturers of the Products and manufacturers of the raw materials of the Products)
24 whether under Proposition 65, Business & Professions Code §§17200 or 17500, based upon
25 Defendant's alleged failure to warn, within the meaning of Proposition 65, about exposure to
26 lead, arsenic, cadmium or mercury contained in any of the Products sold in California on or
27 before sixty (60) days after the Effective Date or based on any other legal claim or theory that
was or could have been alleged in the Action based on the facts alleged in the Complaint.

LAW OFFICES
ANDREW L. PACKARD
294 PAGE STREET SAN FRANCISCO CALIFORNIA 94102
TEL 415-431-2970 FAX 415-431-0410

1 **6.2 Release of Liability of AYS.** Defendant waives all of its rights to institute any
2 claim, or form of legal action against AYS, its officers, directors, employees, agents, attorneys
3 and representatives (the “AYS Releasees”) for all actions or statements made or undertaken by
4 the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business &
5 Professions Code §§ 17200 and 17500 et seq. in the Action.

6 **7. CONSENT JUDGMENT**

7 **7.1 Consent Judgment.** Upon execution of this [Proposed] Consent Judgment by all
8 Parties, AYS had noticed a Motion for Approval & Entry of Consent Judgment in the San
9 Francisco Superior Court pursuant to Title 11, Cal. Code of Regs. §3000, *et seq.* This Motion
10 was served and any future Motions shall be served upon all of the Parties to the Action and upon
11 the California Attorney General’s Office. In the event that the Court fails to approve and order
12 entry of the judgment, this Consent Judgment shall become null and void upon the election of any
13 Party as to them and upon written notice to all of the Parties to the Action pursuant to the notice
14 provisions herein. If this Consent Judgment becomes null and void, or is not approved by the
15 Court within one hundred and eighty (180) days of its execution by all Parties, AYS shall refund
16 all sums paid by Defendant pursuant to Sections 3.2, 3.3 and 4.1 within fifteen (15) days of
17 written notice to AYS by Defendant that a refund is due. Defendant and AYS shall use best
18 efforts to support entry of this Consent Judgment in the form submitted to the Office of the
19 Attorney General. If the Attorney General objects in writing to any term in this Consent
20 Judgment, the Parties shall use best efforts to resolve the concern in a timely manner and prior to
21 the hearing on the motion to approve this Consent Judgment. If the Parties cannot resolve an
22 objection of the Attorney General, then Plaintiff and Defendant shall proceed with seeking entry
23 of an order by the court approving this Consent Judgment in the form originally submitted to the
24 Office of the Attorney General, or in such other form as the Parties shall mutually agree upon
25 after consideration of any comments of the Attorney General. If the Attorney General elects to
26 file a notice or motion with the Court stating that the People shall appear at the hearing for entry
27 of this Consent Judgment so as to oppose entry of the Consent Judgment, then a party may
withdraw from this Consent Judgment prior to the date of the hearing, with notice to all parties

1 and the Attorney General, and upon such notice this Consent Judgment shall be null and void and
2 any sums paid hereunder shall be returned to Defendant within fifteen (15) days of the date of the
3 notice.

4 **7.2 Amendment To Complaint.** Upon the expiration of the 60-Day Notice issued on
5 or about February 22, 2005, the Complaint herein shall be deemed amended to include all
6 violations described in that 60-Day Notice.

7 **8. ENFORCEMENT AND MODIFICATION**

8 **8.1 Enforcement and Stipulated Civil Penalties.** In the event that a dispute arises
9 with respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer
10 within twenty (20) days after any Party receives written notice of an alleged violation of this
11 Consent Judgment from another Party. In the event the affected Parties cannot resolve the
12 dispute, this Consent Judgment may be enforced pursuant to Code of Civil Procedure § 664.6 or
13 any other valid provision of law. The prevailing party in any dispute regarding compliance with
14 the terms of this Consent Judgment shall be awarded its reasonable fees and costs incurred, in
15 addition to any other relief otherwise ordered by the Court, including but not limited to civil
16 penalties assessed pursuant to Section 3 herein.

17 **8.2 Modification of Judgment - Grounds.** This Consent Judgment shall not
18 obligate Defendant to provide a health hazard warning (as described in Section 2 herein) for a
19 Product if that Product causes an exposure below the "No Significant Risk Level" or "Maximum
20 Allowable Daily Level," as those terms are defined in Proposition 65 and its implementing
21 regulations. Any such levels adopted in a final regulation or law pursuant to Proposition 65 after
22 the Effective Date shall become the standard under this Consent Judgment on the date of adoption
23 without need for formal modification of this Consent Judgment, but Defendant retains its rights
24 and obligations under Section 2.3.2. to establish naturally occurring levels of Metals. The Parties
25 acknowledge that new toxicological information or exposure assessments concerning hazardous
26 substances and testing methodologies are continuously becoming available, and that statutory and
27 regulatory standards applicable to the Products may evolve in the future. Accordingly, the Parties
agree that any Party may file a motion pursuant to § 664.6 of the California Code of Civil

1 Procedure, and under the conditions set forth below, move the Court for modification of the
2 warning requirement or any other term set forth in Section 2 herein on the grounds that (a) they
3 conflict with the applicable legal standards concerning the Products or any ingredient therein, or
4 (b) the warning requirement or any other term set forth in Section 2 herein are more stringent than
5 the warning requirements Plaintiff after the Effective Date in an order, judgment or settlement
6 under Proposition 65 agrees to with respect to any dietary supplements that are substantially
7 similar to the Products herein. Absent good cause shown by Plaintiff, Plaintiff shall allow
8 modification of this Consent Judgment to permit Defendant to adhere to such less stringent
9 warning requirements. Any disputes regarding the issues set forth in this subsection shall be
10 resolved in accordance with the procedures set forth in Section 8.3 below.

11 **8.3 Modification of Judgment – Procedure.** In the spirit of cooperation and in the
12 interests of minimizing the investigative, expert and attorneys’ fees and costs associated with
13 such a motion, the Parties agree to meet and confer in good faith as follows. Prior to filing a
14 motion pursuant to Section 8.2 herein, the Party seeking to modify the judgment shall first
15 provide the non-moving Party and the California Attorney General’s Office with any legal or
16 scientific data upon which the motion would rely. The non-moving Party and the California
17 Attorney General’s Office shall be allowed a period of forty-five (45) days to review that data and
18 to provide the moving Party with its formal written response (the Attorney General’s Office’s
19 failure to respond to this submission shall not be construed in any manner to reflect any particular
20 view, on the part of the Attorney General’s Office, of this Consent Judgment or of the applicable
21 law or science). The Parties shall then meet and confer within twenty (20) days of the non-
22 moving Party’s written response. If, after meeting and conferring, the moving Party elects to
23 proceed with a motion to amend this judgment, it may do so with proper notice to the other Party
24 and the Attorney General’s Office as required under the California Code of Civil Procedure.
25 Such a motion may be accompanied by scientific data, studies, written declarations, and live
26 testimony or discovery responses. In the event that the Court determines that a Party seeking or
27 opposing a motion to modify this Consent Judgment did so without justification or failed to meet

1 and confer in good faith prior to moving for such modification, the other Party shall be awarded
2 reasonable fees and costs incurred.

3 **9. NEW PRODUCTS.**

4 **9.1 New Product Testing Prior to Sale in California.** If, after the date that is sixty
5 (60) days after the Effective Date, Defendant elects to ship for sale in California any new
6 product(s) of the type set forth in Section 1.2 hereinabove (herbs, herbal products, traditional
7 patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent
8 formulas, teas, bulk teas, liquid herbal extracts, and capsules) but not identified on Exhibit A
9 hereto, Defendant shall, before shipping the new product(s) for sale in California, conduct the
10 testing set forth in Section 2.1 and adhere to the requirements of this Consent Judgment with
11 respect to such new product(s). If the Product requires a warning under the standards in Sections
12 2.2 and 2.3, Defendant shall, prior to shipment for sale in California of such new product(s)
13 provide AYS with a test result, using the testing methods set forth in Section 2.1 above, and a
14 notice that all of the warning requirements set forth in Section 2.2 hereinabove are complied with
15 as to such new product(s). Failure to provide the warning if required under Section 2.2 shall be a
16 violation of this Consent Judgment subject to stipulated penalties in accordance with Section 3.1.
17 Such new product(s) shall then be deemed Product(s) subject to all of the terms of this Consent
18 Judgment. Before the date that is sixty (60) days after the Effective Date, Defendant may ship for
19 sale to California customers new or reformulated products of the type set forth in Section 1.2 that
20 are not listed on Exhibit A, and the sales of such products shall not be deemed in violation of any
21 term of this Consent Judgment.

22 **9.2 Annual New Product Update List.** Commencing January 15, 2006 and through
23 and including January 15, 2011, Defendant shall provide AYS with an annual updated list of new
24 Products Defendant shipped for sale or use in California in the preceding calendar year for which
25 Defendant has ascertained that warnings are not required under this Consent Judgment. If
26 Plaintiff cannot ascertain and in good faith inquires in writing as to whether a specific Product is a
27 new Product in a given year (for the period commencing January 15, 2006 and through and
including January 15, 2011) Defendant shall promptly (and in any event within thirty-five (35)

1 days of the date of Plaintiff's request) reply to advise whether the Product is a new Product for
2 that year or is an existing Product.

3 **10. GOVERNING LAW**

4 **10.1 Governing Law.** The terms of this Consent Judgment shall be governed by the
5 laws of the State of California. This Consent Judgment shall not govern Products or products
6 sold to consumers or other persons outside the State of California.

7 **11. NOTICES**

8 **11.1 Notices.** All correspondence and notices required to be provided under this
9 Agreement shall be in writing and shall be sent by first class registered or certified mail, or via a
10 reputable overnight delivery service with a tracking mechanism, addressed as follows:

11 All correspondence to AYS shall be mailed to:
12 Attn: Lawrence E. Fahn, Executive Director
13 As You Sow
14 311 California Street, Suite 510
15 San Francisco, CA 94104

With a copy to:
16 Andrew L. Packard, Esq.
17 Law Offices of Andrew L. Packard
18 294 Page Street
19 San Francisco, CA 94102

20 All correspondence to Defendants shall be mailed to:
21 Attn: Gordon Walker, Esq.
22 Nature's Way Products, Inc.
23 1375 N. Mountain Springs Parkway
24 Springville, UT 84663

With a copy in each case to:
25 Judith M. Praitis, Esq.
26 Sidley Austin Brown & Wood LLP
27 555 West 5th Street
Los Angeles, CA 90013

12 **12. INTEGRATION AND MODIFICATION**

13 **12.1 Integration & Modification.** This Consent Judgment, together with the Exhibits
14 hereto which are specifically incorporated herein by this reference, constitutes the entire
15 agreement between the Parties relating to the rights and obligations herein granted and assumed,
16 and supersedes all prior agreements and understandings between the Parties. Except as set forth
17 in Section 8, this Consent Judgment may be modified only upon the written agreement of the
18 Parties to be bound. If any term of this Consent Judgment is found by the court to be invalid,
19 then such term shall be stricken and the remaining terms shall not be affected thereby. In the
20 interpretation hereof, references to general "Sections" (e.g., "Section 8") shall include all
21 subsections within said section (e.g., Sections 8.1, 8.2 and 8.3), but references to specific
22 subsections (e.g., "Section 2.2.1") shall refer only to that specific subsection.

LAW OFFICES
ANDREW L. PACKARD
294 PAGE STREET SAN FRANCISCO CALIFORNIA 94102
TEL 415-431-2970 FAX 415-431-0410

13. COUNTERPARTS

13.1 Counterparts. This Consent Judgment 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.

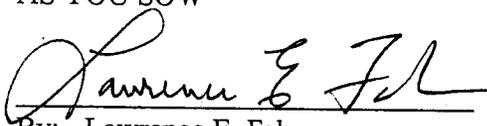
14. AUTHORIZATION

14.1 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.

IT IS SO STIPULATED:

DATED: 5-9-05

AS YOU SOW



By: Lawrence E. Fahn
Executive Director

DATED: _____

NATURE'S WAY PRODUCTS, INC.

By: _____

IT IS SO ORDERED:

DATED: _____

Judge of the Superior Court

INDEX OF ATTACHED EXHIBITS

- EXHIBIT A - Product List
- EXHIBIT B - Notices of Proposition 65 Violations
- EXHIBIT C - BMPs In Place until Federal GMPs Apply to Defendant

LAW OFFICES
ANDREW L. PACKARD
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TEL 415-431-2970 FAX 415-431-0410

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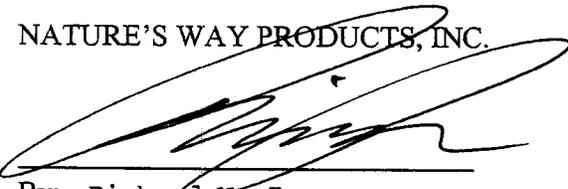
DATED: _____

AS YOU SOW

By: Lawrence E. Fahn
Executive Director

DATED: _____

NATURE'S WAY PRODUCTS, INC.


By: Richard W. Jones
Vice President & CFO

IT IS SO ORDERED:

DATED: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

DATED: _____

AS YOU SOW

By: Lawrence E. Fahn
Executive Director

DATED: _____

NATURE'S WAY PRODUCTS, INC.

By:

IT IS SO ORDERED:

DATED: MAY 17 2005

 RONALD EVANS QUIDACHAY
Judge of the Superior Court

INDEX OF ATTACHED EXHIBITS

EXHIBIT A - Product List

EXHIBIT B - Notices of Proposition 65 Violations

EXHIBIT C - BMPs In Place until Federal GMPs Apply to Defendant

EXHIBIT A

All of the Herbal Singles dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Activated Charcoal	Ginger Root
Alfa-Max®	Ginseng, American
Alfalfa Leaves	Ginseng, Korean
Aloe Vera	Glucosaminan
Amoracia	Goldenseal Herb
Astragalus Root	Goldenseal Root
Barley Grass	Gotu Kola Herb
Barley Grass Bulk	Hawthorn Berries
Bayberry Root Bark	Hops Flowers
Beet Root Powder	Horsetail Grass
Black Cohosh Root	Hydrangea Root
Black Walnut Hulls	Hyssop
Bladderwrack	Juniper Berries
Blessed Thistle Herb	Kelp
Blue Vervain Herb	Kudzu
Brigham Tea Herb	Lavender Flowers
Burdock Root	Licorice Root
Butcher's Broom Root	Maca
Cacao	Melissa (Lemon Balm)
Cascara Sagrada Bark	Linden Leaf & Flowers
Catnip Herb	Lobelia Herb
Cat's Claw	Marshmallow Root
Cayenne Pepper	Myrrh Gum
Chamomile Flowers	Necm
Chlorella	Nettle Herb
Corn Silk	Olive Leaf
Cranberry Fruit	Opuntia
Damiana Leaves	Oregon Grape Root
Dandelion Root	Parsley Herb
Devil's Claw Root	Pau d'Arco Inner Bark
Dong Quai Root	Peppermint Leaves
Echinacea Herb	Plantain Leaves
Elecampane	Psyllium Husks
Elderberry	Psyllium Seed
Eleuthero, Siberian	Red Clover Blossoms
Eyebright Herb	Red Raspberry Leaves
Fennel Seed	Rosemary Leaves
Fenugreek Seed	Sarsaparilla Root
Feverfew Leaves	Saw Palmetto Berries
Fo-Ti Root	Schizandra Fruit
Garlic Cloves	Scullcap Herb

Senna Leaves
Slippery Elm Bark
Spirulina
St. John's Wort
Suma
Thyme Leaves
Uva Ursi Leaves
Valerian Root
Vitex
White Oak Bark

White Willow Bark
Wild Yam
Wood Betony Herb
Yarrow Flowers
Yellow Dock Root
Yucca Stalk
Echinacea Liquid
Garlic Oil Liquid
Eleuthero (Siberian) Liquid
Stevia Leaves Liquid

All of the Herbal Formulas dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

AKN® SkinCare™

Bee Pollen

Bee Pollen-Siberian Eleuthero

Blood Sugar

Bone, Flesh & Cartilage

Capsicool®

Cayenne Extra Hot (100,000 IU)

Cayenne-Garlic

Cayenne-Ginger

Cayenne-Goldenseal

Cayenne-Hawthorn-Vitamin E

Change-O-Life®

Damiana-Elleuthero

Digestion

Echinacea-Astragalus-Reishi

Echinacea-Elderberry-Zinc

Echinacea-Ester-C

Echinacea-Elleuthero

Echinacea-Goldenseal

Echinacea Root Complex

Energizer®

Ex-Stress®

Fem-Mend®

Fenu-Thyme

Garlic-Parsley

Gastritix™

HAS® Original Formula

Hair & Skin

Heart

Herbal Eyebright

Herbal Slim®

Herbal-Up®

Joints

Kidney-Bladder

Leg Veins

Mood Aid™

Motion Mate®

MygrAid™

Myrrh-Goldenseal Plus™

Olive Leaf-Echinacea

PMS

Prostate

Red Clover Combo

Silent Night™

Urinary

Vision

Yucca-AR™

Echinacea Complex Liquid

Echinacea-Goldenseal Liquid

Echinacea-Goldenseal Liquid (alcohol free)

All of the Standardized Herbal Extracts dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Andrographis	Gymnema
Artichoke	Hawthorn
Ashwagandha	Holy Basil
Bilberry	Horny Goat Weed
Bitter Orange	Horsechestnut
Black Cohosh	Maca
Blue Scullcap	Milk Thistle
Boswellia	Noni Fruit
Cat's Claw	Olive Fruit
Chamomile	Olive Leaf
Cinnamon	Oregano Oil
Cordyceps	Pomegranate
Cranberry	Pygeum
Devil's Claw	Reishi
Echinacea Angustifolia	Rhodiola Rosea
Echinacea/Olive Leaf	Saw Palmetto
Eleuthero, Siberian	Saw Palmetto-Pygeum
Feverfew	Shiitake-Maitake
Ginkgo	Soy Isoflavone
Ginseng, Korean	St. John's Wort
Grapefruit Seed	Turmeric
Grape Seed	Uva Ursi
Green Tea	Valerian
Guggul	White Willow Bark

All of the Branded Phytomedicine dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

BoneSoy®	Myco Sport®
DIM-Plus™	MygraFew® (Feverfew)
EchinaGuard® Echinacea Liquid	Pepogest™ (Peppermint Oil)
EchinaGuard® FlexiTabs	Perika® (St. John's Wort)
EstroSoy™	ProstActive® (Saw Palmetto)
EstroSoy™ Plus	ProstActive® Plus (Saw Palmetto/Nettle)
Femaprin® (Vitex)	Prostol™
Garlicin®	Sambucol® Black Elderberry Syrup
Garlicin® CF	Sambucol® Black Elderberry Syrup (Sugar-Free)
Garlicin® HC	Sambucol® Black Elderberry Lozenge
Ginkgold®	Sambucol® Immune System Formula
Ginkgold® MAX	Sambucol® Immune System Lozenge
Ginkgold® Eyes	Sambucol® for Kids Elderberry Formula
HeartCare™ (Hawthorn)	Original Silica Gel
Myco Defense™	System Well™ Immune System
Myco Heart®	

Thisilyn® (Milk Thistle)
Thisilyn® Digestive Cleanse
Super Thisilyn®
Thisilyn® Daily Cleanse

Thisilyn® Herbal Cleansing Kit
Thisilyn® Mineral Cleansing Kit
Valerian Nighttime™

All of the Aloe Vera Liquids food products manufactured and/or distributed by Nature's Way Products, Inc.

Aloe Vera Whole Leaf Juice
Aloe Vera Gel & Juice, Berry Flavor

Aloe Vera Gel & Juice

All of the Herbal Laxatives dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Aloelax®
AloeMAXLAX®

Naturalax™ 2
Naturalax™ 3

All of the Essential Fatty Acid dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Cod Liver Oil
Borage Oil
EFA Blend for Children™
EPO Cold Pressed
Flax Oil
Flax Oil Super Lignan
Flax Oil Liquid
Flax Oil Super Lignan Liquid
Flax Lignan & Fiber Powder
Hemp Oil

Hemp Protein & Fiber Powder
MacNut Oil
Mega EFA Blend
Mega EFA Blend, Liquid
Cod Liver Oil
Fisol™ Fish Oil
Krill Oil
EPA 18/12
EPA 30/20
Neuromins® DHA

All of the Glucosamine dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

FlexMax™ Glucosamine-Chondroitin
FlexMax™ Glucosamine HCl

FlexMax™ Glucosamine Sulfate
Flexmax™ Glucosamine Sulfate-MSM

All of the Probiotic dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Primadophilus®
Primadophilus® Bifidus
Primadophilus® Junior
Primadophilus® for Children

Primadophilus® Chewable, Cherry Flavor
Primadophilus® Chewable, Orange Flavor
Primadophilus® Reuteri
Primadophilus® Reuteri Powder

All of the Specialty, Weight Loss and Special Formulas dietary supplement and food products manufactured and/or distributed by Nature's Way Products, Inc.

5-HTP (L-Hydroxytryptophan)
Broad Spectrum Enzyme
Chlorofresh®
Chlorofresh® Liquid, Mint
Chlorofresh® Liquid, Natural
Lactase Enzyme
Orchard Fruits™
Garden Veggies™
CLA-One®
MSM
Phosphatidyl Serine
Pycnogenol®

Slim & Trim™ Chocolate Drink Mix
Slim & Trim™ Strawberry Drink Mix
Slim & Trim™ Vanilla Drink Mix
Tonalin® XS CLA
Activated Charcoal
Glucosamine HCl
Lecithin
Lecithin Concentrate
Melatonin
Red Yeast Rice
Soy Isoflavones
Dr. Masquelier's Tru-OPCs™

All of the Vitamin and Mineral dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Alpha Lipoic Acid
Antioxidant Formula
Dry Natural Beta Carotene
Natural Beta Carotene
Calcium Citrate
Calcium Complex Bone Formula
Calcium & Magnesium
Calcium, Magnesium & Vitamin D
Calcium, Magnesium & Zinc
Coral Calcium
CoQ10 & turmeric
CoQ10 with CoQsol®
Boron
Chromium Picolinate
GTF Chromium
Iron
Magnesium
Multimineral Complex
Potassium
Selenium
Zinc
Zinc Lozenge with Echinacea
Alive!® Whole Food Energizer (with Iron)
Alive!® Whole Food Energizer (Iron-free)
Alive!® Ultra-Shake Vanilla
Alive!® Shake Apple & Cinnamon.
Alive!® Effervescent
Completia® Diabetic (Iron-free)
Completia® Energy Once Daily
Completia® Energy Once Daily (Iron-free)
Completia® Heart Once Daily (with Iron)

Completia® Heart Once Daily (Iron-free)
Completia® Prenatal (45 mg Iron)
Daily Two Multiple (Iron-free)
Multivitamin (Iron-free)
Multivitamin (with Iron)
Once Daily Multi (with Iron)
Prenatal Complete
Protectamins® Cruciferous Vegetable Blend
Protectamins® Lycopene Super Antioxidant
Protectamins® Multi-Carotene Antioxidant
Vitamin A
Dry Vitamin D
Dry A & D
B-Stress with Eleuthero
Biotin Lozenge
Choline
Choline-Inositol
Folic Acid
Inositol
Niacin
Niacinamide
Pantothenic Acid
Vitamin B-1
Vitamin B-2
Vitamin B-6
Vitamin B-12 Lozenge
Vitamin B-50 Complex
Vitamin B-100 Complex
Buffered C 500
Ester-C® 500 with Bioflavonoids
Vitamin C 500 with Bioflavonoids

Vitamin C 500 with Rose Hips
Vitamin C 1000 with Rose Hips
Natural Vitamin E

Vitamin E
Vitamin E Tocotrienols
Vitamin E Tocopherols

All of the MMS Pro™ brand dietary supplement products manufactured and/or distributed by Nature's Way Products, Inc.

Activated Enzymes
Advanced Antioxidant
Astragalus
Bilberry Pro
Black Cohosh Pro
Calmicin™ Plus
Cardi-Plant™ Pro
Cayenne Pepper
Activated Charcoal
Chlorella
Cranberry UT
Curcumin Pro
Vitamin E
EchinaGuard® Pro
Echinacea Herb
Entrin™ Bifidus
Entrin™ Children's
Entrin™ Acidophilus
Ester-C® with Bioflavonoids
Women's Formula-H®
Women's Formula-R™
Garlicin® Pro
Ginkgo-D®
Ginger
Gymnema Pro

Hawthorn Berries
Horsechestnut Pro
Indole Pro
Innerfresh®
Innerfresh® Liquid, Natural
Innerfresh® Liquid, Mint
Kidney UT
Kelp
LBC-LAX™
Licorice Root
MetActive™
Neuromins® Pro
Olea Pro
Perika® Pro
Phosphatidyl Serine
Preventamins® Iron Free
ProstActive® Pro
Red Clover Combination
Sambucol® Pro Black Elderberry Syrup
Eleuthero
Slippery Elm Bark
Thisilyn® Pro
Uva Ursi
Vitalex

All of the Private Label dietary supplement products manufactured by Nature's Way Products, Inc.

Lindberg® brand Products:

Activated Charcoal
Astragalus Root
Bee Pollen
Bilberry Standardized Extract
Black Cohosh Root
Black Cohosh Standardized Extract
Cascara Sagrada
Cat's Claw
Cayenne
Cranberry Fruit
Dong Quai Root

Echinacea
Echinacea Goldenseal Root
Fenugreek Seed
Feverfew Standardized Extract
Garlic Concentrate
Ginger Root
Ginkgo Standardized Extract
Gotu Kola
Hawthorn Berries
Horsechestnut Standardized Extract
Korean Ginseng Root

Licorice Root
Milk Thistle Standardized Extract
Olive Leaf Standardized Extract
Pau d' Arco
Saw Palmetto Berries
Saw Palmetto Standardized Extract
Siberian Eleuthero Root

Siberian Eleuthero Standardized Extract
Sleep Formula
Slimming Formula
St. John's Wort Standardized Extract
Turmeric Standardized Extract
Valerian Root

Doctor's Preferred® brand Products:
Elderberry Advantage
Energy Essentials

drugstore.com™ brand Products:
Bilberry Standardized Extract
Black Cohosh Standardized Extract
Ester-C® with Bioflavonoids
Milk Thistle Standardized Extract

Neuromins®
Olive Leaf Standardized Extract
Slippery Elm Bark
St. John's Wort

The Vitamin Shoppe® brand Product:
Black Elderberry Syrup

In addition to those products expressly listed herein, (a) if a product is a predecessor to a listed product but discontinued before the Effective Date; or (b) if a product is a discontinued product of the type meeting the definition of a Product in Section 1.2 and was manufactured prior to the Effective Date, such products are deemed listed on this Exhibit A.

EXHIBIT B



As You Sow

Tel: (415) 391-3212

A Foundation Planting Seeds for Social Change

Fax: (415) 391-3246

A NON-PROFIT CORPORATION
311 California Street, Suite 510
San Francisco, California 94104
www.asyousow.org

May 5, 2003

**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 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.

Alleged violator. The name of the violator covered by this notice is **NATURES WAY PRODUCTS, INC. ("NW").**

Chemicals. These violations involve exposures to lead and lead compounds from the products listed 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.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by NW. 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

Notice of Violation of California Health & Safety Code §25249.5 et seq.
May 5, 2003
Page 2

liquids." The products that are the subject of this notice include but are not limited to the following:

<u>Product</u>	<u>Chemical</u>
Dong Quai Root	lead and lead compounds
Eyebright	lead and lead compounds
Glucosaminan Root	lead and lead compounds
Change-O-Life	lead and lead compounds
Fo-Ti Root	lead and lead compounds
Schizandra Fruit	lead and lead compounds
Astragalus Root	lead and lead compounds
Neem Leaves	lead and lead compounds
Yucca-AR	lead and lead compounds
Gotu Kola Herb	lead and lead compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

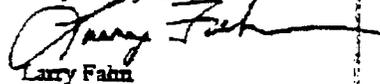
Duration of violations. Each of these ongoing violations has occurred on every day since May 5, 1999, and will continue every day until clear and reasonable warnings are provided or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

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
Tel (415) 431-2970 Fax (415) 431-041

Very truly yours,



Larry Fahn
Executive Director

Enclosure

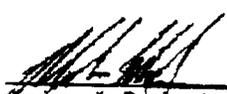
CERTIFICATE OF MERIT

(For As You Sew's Notice of Proposition 65 Violation
on NATURE'S WAY PRODUCTS, INC.)

I, Andrew L. Packard, declare:

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

Dated: April 22, 2003


Andrew L. Packard

Attachments (for Attorney General Copy only)

APPENDIX A: OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25248.5 through 25248.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 560 chemicals have been listed as of May 1, 1986. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 700,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6800.
Last Updated May 14, 1997.

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: 311 California Street, Suite 510, San Francisco, California 94104.

On May 5, 2003, I served the following documents:

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

on the following 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:

Nature's Way Products, Inc.
Chris Schmick, CEO
P.O. Box 4000
Springville, UT 84663

On May 5, 2003, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

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:

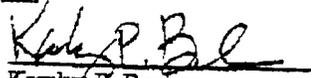
Att: Craig Thompson, Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
Post Office Box 944255
Sacramento, CA 94244-2550

On May 5, 2003, I served the following document(s):

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

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on May 5, 2003, at San Francisco, California.


Karalya P. Buchner

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 04/18/03)

THE HONORABLE THOMAS J CRLOFF ALAMEDA COUNTY DISTRICT ATTORNEY 1225 FALLON ST RM 900 OAKLAND CA 94612	THE HONORABLE ARTHUR MAILLET INYO COUNTY DISTRICT ATTORNEY PO DRAWER D INDEPENDENCE CA 93628	THE HONORABLE DEAN FILIPPO MONTEREY COUNTY DISTRICT ATTORNEY 240 CHURCH ST #101 SALINAS CA 94902
THE HONORABLE WILLIAM RICHMOND ALPINE COUNTY DISTRICT ATTORNEY PO BOX 248 MARKLEEVILLE CA 98120	THE HONORABLE EDWARD R JAGELS KERN COUNTY DISTRICT ATTORNEY 1215 TRUXTON AVE BAKERSFIELD CA 93301	THE HONORABLE GARY LIEBERSTEIN NAPA COUNTY DISTRICT ATTORNEY 931 PARKWAY MALL NAPA CA 94559
THE HONORABLE TODD D RIEBE AMADOR COUNTY DISTRICT ATTORNEY 708 COURT ST STE 202 JACKSON CA 95642	THE HONORABLE RON CALHOUN KINGS COUNTY DISTRICT ATTORNEY 1400 W LACEY BLVD HANFORD CA 93230	THE HONORABLE MICHAEL FERGUSON NEVADA COUNTY DISTRICT ATTORNEY 201 CHURCH ST STE 8 NEVADA CITY CA 95859
THE HONORABLE MICHAEL RAMSEY BUTTE COUNTY DISTRICT ATTORNEY 28 COUNTY CTR DR OROVILLE CA 95965	THE HONORABLE GERHARD LUCK LAKE COUNTY DISTRICT ATTORNEY 255 N FORBES ST LAKEPORT CA 95463	THE HONORABLE TONY RACKAUCKAS ORANGE COUNTY DISTRICT ATTORNEY 401 CIVIC CTR DR WEST SANTA ANA CA 92701
THE HONORABLE JEFFREY TUTTLE CALAVERAS COUNTY DISTRICT ATTORNEY 251 MTR RANCH RD SAN ANDREAS CA 95248	THE HONORABLE ROBERT BURNS LASSEN COUNTY DISTRICT ATTORNEY 220 S LASSEN ST STE 8 SUSANVILLE CA 96130	THE HONORABLE BRAD FENOCCIO PLACER COUNTY DISTRICT ATTORNEY 11552 B AVE AUBURN CA 95603
THE HONORABLE JOHN POYNER COLUSA COUNTY DISTRICT ATTORNEY 547 MARKET ST COLUSA CA 95932	THE HONORABLE STEVE COOLEY LA COUNTY DISTRICT ATTORNEY 210 W TEMPLE ST STE 19000 LOS ANGELES CA 90012-3210	THE HONORABLE JEFF CLINAN PLUMAS COUNTY DISTRICT ATTORNEY 520 MAIN ST RM 404 QUINCY CA 95971
THE HONORABLE ROBERT KOCHLY CONTRA COSTA COUNTY DISTRICT ATTORNEY PO BOX 578 MARTINEZ CA 94553	THE HONORABLE ERNEST LICALSI MADERA COUNTY DISTRICT ATTORNEY 209 W YOSEMITE AVE MADERA CA 95337	THE HONORABLE GHOSE C TRASK II RIVERSIDE COUNTY DISTRICT ATTORNEY 4075 MAIN ST RIVERSIDE CA 92501
THE HONORABLE MICHAEL RIESE DEL NORTE COUNTY DISTRICT ATTORNEY 450 H ST CRESCENT CITY CA 95531	THE HONORABLE PAULA FRESCH KAMENA MARIN COUNTY DISTRICT ATTORNEY 3501 CIVIC CTR DR RM 130 SAN RAFAEL CA 94903	THE HONORABLE JAN SCULLY SACRAMENTO COUNTY DISTRICT ATTORNEY 901 G ST SACRAMENTO CA 95814
THE HONORABLE GARY L LACY EL DORADO COUNTY DISTRICT ATTORNEY 515 MAIN ST PLACERVILLE CA 95667	THE HONORABLE ROBERT BROWN MARIPOSA COUNTY DISTRICT ATTORNEY PO BOX 748 MARIPOSA CA 95338	THE HONORABLE JOHN SANSFIELD SAN BENITO COUNTY DISTRICT ATTORNEY 419 FOURTH ST, FL 2 HOLLISTER CA 95023
THE HONORABLE ELIZABETH EGAN FRESNO COUNTY DISTRICT ATTORNEY 2220 TULARE ST STE 1000 FRESNO CA 93721	THE HONORABLE NORMAN YROMAN MENDOCINO COUNTY DISTRICT ATTORNEY PO BOX 1000 UKIAH CA 95482	THE HONORABLE MICHAEL RAMOS SAN BERNARDINO COUNTY DISTRICT ATTORNEY 316 N MTR VIEW AVE SAN BERNARDINO CA 92415-0004
THE HONORABLE ROBERT HOLZAPFEL GLENN COUNTY DISTRICT ATTORNEY PO BOX 430 WILLOWS CA 95588	THE HONORABLE GORDON SPENCER MERCED COUNTY DISTRICT ATTORNEY 2222 M ST MERCED CA 95340	THE HONORABLE BONNIE DUMANS SAN DIEGO COUNTY DISTRICT ATTORNEY 330 W BRADWAY STE 1320 SAN DIEGO CA 92101
THE HONORABLE PAUL CALLEGOS HUMBOLDT COUNTY DISTRICT ATTORNEY 325 FIFTH ST EUREKA CA 95501	THE HONORABLE JORDAN FUNK MODOC COUNTY DISTRICT ATTORNEY PO BOX 1171 ALTURAS CA 96101	THE HONORABLE TERENCE HALLINAN SAN FRANCISCO COUNTY DISTRICT ATTORNEY 680 BRYANT ST STE 305 SAN FRANCISCO CA 94103
THE HONORABLE GILBERT OTERO IMPERIAL COUNTY DISTRICT ATTORNEY 939 W MAIN ST EL CENTRO CA 92243	THE HONORABLE GEORGE BOOTH MONO COUNTY DISTRICT ATTORNEY PO BOX 517 BRIDGEPORT CA 93617	THE HONORABLE JOHN D PHILLIPS SAN JOAQUIN COUNTY DISTRICT ATTORNEY PO BOX 9903 STOCKTON CA 95201-0903

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

THE HONORABLE JAMES P FOX
SAN MATEO COUNTY DISTRICT ATTORNEY
400 COUNTY CTR FL 3
REDWOOD CITY CA 94063

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

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

THE HONORABLE BOB LEE
SANTA CRUZ COUNTY DISTRICT ATTORNEY
701 OCEAN ST STE 200
SANTA CRUZ CA 95060

THE HONORABLE MCGREGOR SCOTT
SHASTA COUNTY DISTRICT ATTORNEY
1225 COURT ST FL 3
REDDING CA 96001

THE HONORABLE LAWRENCE ALLEN
SIERRA COUNTY DISTRICT ATTORNEY
PO BOX 457
DOWNVILLE CA 95936

THE HONORABLE PETER F KNOLL
SIKIYOU COUNTY DISTRICT ATTORNEY
PO BOX 988
YREKA CA 96097

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

THE HONORABLE STEPHEN PASSALACQUA
SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DR RM 212-J
SANTA ROSA CA 95403

THE HONORABLE JAMES C BRAZELTON
STANISLAUS COUNTY DISTRICT ATTORNEY
PO BOX 442
MODESTO CA 95353

THE HONORABLE CARL V ADAMS
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151 W MISSION ST
SAN JOSE CA 95110

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



As You Sow

Tel: (415) 391-3212

A Foundation Planting Seeds for Social Change

Fax: (415) 391-3246

A NON-PROFIT CORPORATION
 311 California Street, Suite 510
 San Francisco, California 94104
 www.asyousow.org

December 23, 2003

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 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.

Alleged violator. The name of the violator covered by this notice is **NATURE'S WAY PRODUCTS, INC.** ("NW").

Chemicals. These violations involve exposures to lead, lead compounds, mercury and mercury compounds from the products listed 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.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by NW. 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,



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
 December 23, 2003
 Page 2

including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids." The products that are the subject of this notice include but are not limited to the following:

<u>Product</u>	<u>Chemical</u>
Silent Night	lead and lead compounds
PMS	mercury and mercury compounds
AKN Skincare	mercury and mercury compounds
Ultimate Immunity	lead and lead compounds
	mercury and mercury compounds
HAS	lead and lead compounds
Bone, Flesh & Cartilage	lead and lead compounds
Leg Veins	mercury and mercury compounds
Echinacea, Astragalus & Reishi	lead and lead compounds
	mercury and mercury compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

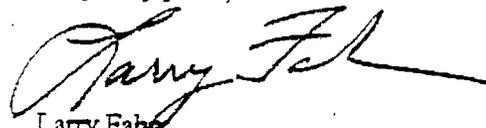
Duration of violations. Each of these ongoing violations has occurred on every day since December 23, 1999, and will continue every day until clear and reasonable warnings are provided or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

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
 Tel. (415) 431-2970 Fax (415) 431-0410

Very truly yours,



Larry Faba
 Executive Director

Enclosure

CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation
on NATURE'S WAY PRODUCTS, INC.)

I, Andrew L. Packard, declare:

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

Dated: December 22, 2003


Andrew L. Packard

Attachments (for Attorney General Copy only)

§ 12903

BARCLAYS CALIFORNIA CODE OF REGULATIONS

Title 22

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 25249.12, Health and Safety Code, Reference: Section 25249.7, Health and Safety Code.

HISTORY

1. New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 227-2000.

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: 311 California Street, Suite 510, San Francisco, California 94104.

On December 23, 2003, I served the following documents:

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

on the following 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:

Nature's Way Products, Inc.
Rory Mahony, CEO
P.O. Box 4000
Springville, UT 84663

On December 23, 2003, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

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

Attn: Craig Thompson, Deputy Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

On December 23, 2003, I served the following document(s):

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

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Services mail box for delivery by First Class Mail.

Executed on December 23, 2003, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 04/18/03)

THE HONORABLE THOMAS J ORLOFF ALAMEDA COUNTY DISTRICT ATTORNEY 1225 FALLON ST RM 900 OAKLAND CA 94612	THE HONORABLE ARTHUR MAILLET INYO COUNTY DISTRICT ATTORNEY PO DRAWER D INDEPENDENCE CA 93526	THE HONORABLE DEAN FUPPO MONTEREY COUNTY DISTRICT ATTORNEY 240 CHURCH ST #101 SALINAS CA 93902
THE HONORABLE WILLIAM RICHMOND ALPINE COUNTY DISTRICT ATTORNEY PO BOX 248 MARKLEEVILLE CA 96120	THE HONORABLE EDWARD R JAGELS KERN COUNTY DISTRICT ATTORNEY 1215 TRUXTUN AVE BAKERSFIELD CA 93301	THE HONORABLE GARY LIEBERSTEIN NAPA COUNTY DISTRICT ATTORNEY 931 PARKWAY MALL NAPA CA 94959
THE HONORABLE TODD O RIESE AMADOR COUNTY DISTRICT ATTORNEY 708 COURT ST STE 202 JACKSON CA 95642	THE HONORABLE RON CALHOUN KINGS COUNTY DISTRICT ATTORNEY 1400 W LACEY BLVD HANFORD CA 93230	THE HONORABLE MICHAEL FERGUSON NEVADA COUNTY DISTRICT ATTORNEY 201 CHURCH ST STE 8 NEVADA CITY CA 95959
THE HONORABLE MICHAEL RAMSEY BUTTE COUNTY DISTRICT ATTORNEY 25 COUNTY CTR DR ORVILLE CA 95966	THE HONORABLE GERHARD LUCK LAKE COUNTY DISTRICT ATTORNEY 255 N FORBES ST LAKEPORT CA 95453	THE HONORABLE TONY RACKAUCKAS ORANGE COUNTY DISTRICT ATTORNEY 401 CIVIC CTR DR WEST SANTA ANA CA 92701
THE HONORABLE JEFFREY TUTTLE CALAVERAS COUNTY DISTRICT ATTORNEY 891 MTN RANCH RD SAN ANDREAS CA 95249	THE HONORABLE ROBERT BURNS LASSEN COUNTY DISTRICT ATTORNEY 220 S LASSEN ST STE 8 SUSANVILLE CA 96130	THE HONORABLE BRAD FENOCCHIO PLACER COUNTY DISTRICT ATTORNEY 11562 B AVE AUBURN CA 95603
THE HONORABLE JOHN POYNER COLUSA COUNTY DISTRICT ATTORNEY 547 MARKET ST COLUSA CA 95932	THE HONORABLE STEVE COOLEY LA COUNTY DISTRICT ATTORNEY 210 W TEMPLE ST STE 19000 LOS ANGELES CA 90012-3210	THE HONORABLE JEFF CUNAN PLUMAS COUNTY DISTRICT ATTORNEY 520 MAIN ST RM 404 QUINCY CA 95971
THE HONORABLE ROBERT KOCHLY CONTRA COSTA COUNTY DISTRICT ATTORNEY PO BOX 670 MARTINEZ CA 94553	THE HONORABLE ERNEST LICALSI MADERA COUNTY DISTRICT ATTORNEY 209 W YOSEMITE AVE MADERA CA 93637	THE HONORABLE GROVER C TRASK II RIVERSIDE COUNTY DISTRICT ATTORNEY 4075 MAIN ST RIVERSIDE CA 92501
THE HONORABLE MICHAEL RIESE DEL NORTE COUNTY DISTRICT ATTORNEY 450 H ST CRESCENT CITY CA 95531	THE HONORABLE PAULA FRESCHI KAMENA MARIN COUNTY DISTRICT ATTORNEY 3501 CIVIC CTR DR RM 130 SAN RAFAEL CA 94903	THE HONORABLE JAN SCULLY SACRAMENTO COUNTY DISTRICT ATTORNEY 901 G ST SACRAMENTO CA 95814
THE HONORABLE GARY LLACY EL DORADO COUNTY DISTRICT ATTORNEY 515 MAIN ST PLACERVILLE CA 95667	THE HONORABLE ROBERT BROWN MARIPOSA COUNTY DISTRICT ATTORNEY PO BOX 748 MARIPOSA CA 95338	THE HONORABLE JOHN SARGFIELD SAN BENITO COUNTY DISTRICT ATTORNEY 419 FOURTH ST, FL 2 HOLLISTER CA 95023
THE HONORABLE ELIZABETH EGAN FRESNO COUNTY DISTRICT ATTORNEY 2220 TULARE ST STE 1000 FRESNO CA 93721	THE HONORABLE NORMAN YRCMAN MENDOCINO COUNTY DISTRICT ATTORNEY PO BOX 1000 UKIAH CA 95482	THE HONORABLE MICHAEL RAMOS SAN BERNARDINO COUNTY DISTRICT ATTORNEY 316 N MTN VIEW AVE SAN BERNARDINO CA 92415-0004
THE HONORABLE ROBERT HOLZAPFEL GLENN COUNTY DISTRICT ATTORNEY PO BOX 430 WILLOWS CA 95968	THE HONORABLE GORDON SPENCER MERCED COUNTY DISTRICT ATTORNEY 2222 M ST MERCED CA 95340	THE HONORABLE BONNIE DUMANIS SAN DIEGO COUNTY DISTRICT ATTORNEY 330 W BROADWAY STE 1320 SAN DIEGO CA 92101
THE HONORABLE PAUL CALLEGOS HUMBOLDT COUNTY DISTRICT ATTORNEY 825 FIFTH ST EUREKA CA 95501	THE HONORABLE JORDAN FUNK MODOC COUNTY DISTRICT ATTORNEY PO BOX 1171 ALTURAS CA 96101	THE HONORABLE TERENCE HALLINAN SAN FRANCISCO COUNTY DISTRICT ATTORNEY 880 BRYANT ST STE 325 SAN FRANCISCO CA 94103
THE HONORABLE GILBERT OTERO IMPERIAL COUNTY DISTRICT ATTORNEY 939 W MAIN ST EL CENTRO CA 92243	THE HONORABLE GEORGE BOOTH MONO COUNTY DISTRICT ATTORNEY PO BOX 617 BRIDGEPORT CA 93617	THE HONORABLE JOHN D PHILLIPS SAN JOAQUIN COUNTY DISTRICT ATTORNEY PO BOX 990 STOCKTON CA 95201-0990

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

THE HONORABLE JAMES P FOX
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400 COUNTY CTR FL 3
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THE HONORABLE THOMAS W SNEDDON JR
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SANTA BARBARA CA 93101

THE HONORABLE GEORGE KENNEDY
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THE HONORABLE BOB LEE
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THE HONORABLE PETER F KNOLL
SISKIYOU COUNTY DISTRICT ATTORNEY
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THE HONORABLE STEPHEN PASSALACQUA
SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DR RM 212-J
SANTA ROSA CA 95403

THE HONORABLE JAMES C BRAZELTON
STANISLAUS COUNTY DISTRICT ATTORNEY
PO BOX 442
MODESTO CA 95353

THE HONORABLE CARL V ADAMS
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448 SECOND ST
YUBA CITY CA 95991

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CITY HALL ROOM 234
SAN FRANCISCO, CA 94102

EXHIBIT C

EXHIBIT C
MANUFACTURING PRACTICES

- Nature's Way uses only approved suppliers. Each new supplier is approved based on pre-shipment testing conforming to established product specifications.
- Suppliers are evaluated on compliance to GMPs using a supplier questionnaire. On-site audits are conducted as needed based on the results of the questionnaire.
- Heavy metal testing is performed in-house for each batch of raw materials upon receipt. A composite sample is obtained from the square root of $N + 1$ with "N" being the total numbers of containers received.
- Any batch not meeting specifications is rejected and returned to the supplier.
- Nature's Way uses only stainless steel equipment or equivalent high grade equipment in the manufacture of the products.
- All manufacturing equipment is cleaned after each production batch.
- Nothing in the manufacturing or packaging processes adds heavy metals to the products.
- The shipping and packaging containers used by Nature's Way and its suppliers do not add any heavy metals to the ingredients or products.
- After receipt and during manufacturing raw material ingredients are segregated for storage to eliminate the possibility of cross-contamination.
- The Nature's Way Quality Assurance Department conducts regular audits of all phases of the manufacturing process to ensure compliance with GMPs.