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ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 15 2008

CLERK OF THE SUPERIOR COURT  
By E. Opelski-Erickson, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

14 PEOPLE OF THE STATE OF CALIFORNIA ex rel.  
EDMUND G. BROWN JR., Attorney General of the  
15 State of California,  
16  
17 v.  
18 AVALON NATURAL PRODUCTS, INC.,  
BEAUMONT PRODUCTS, INC., NUTRIBIOTIC,  
19 WHOLE FOODS MARKET CALIFORNIA, INC., and  
Does 1 - 100  
20  
21 Defendants,

Case No. RG08389960

STIPULATION FOR ENTRY OF  
CONSENT JUDGMENT AND  
ORDER THEREON  
(NUTRIBIOTIC)

22 Plaintiff, the People of the State of California ("People") and defendant NutriBiotic herein  
23 enter into this Stipulation for Entry of Consent Judgment (hereinafter "Consent Judgment") as  
24 follows:

25 1. Introduction

26 1.1 On May 29, 2008, the People of the State of California, ex rel. Edmund G. Brown Jr.  
27 ("People") filed a Complaint for Civil Penalties and Injunctive Relief ("Complaint") in the  
28 Superior Court of the State of California, County of Alameda against NutriBiotic and other

1 defendants.

2 1.2 NutriBiotic is a company that employs more than ten persons and manufactures,  
3 distributes and/or sells Fresh Fruit Shower Gel to consumers within the state of California.

4 1.3 The People's Complaint alleges that NutriBiotic, through the sale of its Shower Gel to  
5 consumers in California, violated provisions of the Safe Drinking Water and Toxic Enforcement  
6 Act of 1986, Health and Safety Code sections 25249.5 et seq. ("Proposition 65"), and Business  
7 and Professions Code sections 17200 et seq. ("Unfair Competition Act"), by knowingly and  
8 intentionally exposing persons to 1,4-dioxane, a chemical known to the State of California to  
9 cause cancer, without first providing a clear and reasonable warning to such individuals.

10 1.4 For purposes of this Consent Judgment, the parties stipulate that the People's  
11 Complaint is deemed to be limited to the Fresh Fruit Shower Gel.

12 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
13 jurisdiction over the allegations of violations contained in the Complaint and personal  
14 jurisdiction over NutriBiotic as to the acts alleged in the Complaint, that venue is proper in the  
15 County of Alameda and that this Court has jurisdiction to enter this Consent Judgment.

16 1.6 The Parties enter into this Consent Judgment to settle certain disputed claims as alleged  
17 in the Complaint and to avoid potentially lengthy and/or costly litigation between the Parties  
18 hereto. By execution of this Consent Judgment, the Parties do not admit any facts or conclusions  
19 of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating  
20 any violations of Proposition 65, the Unfair Competition Act, or any other statutory, common  
21 law or equitable requirements relating to Fresh Fruit Shower Gel. Nothing in this Consent  
22 Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue  
23 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
24 construed as an admission by the Parties, either individually or collectively, of any fact,  
25 conclusion of law, issue of law, or violation of law. Except as provided herein, nothing in this  
26 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the  
27 Parties may have in this or any other or future legal proceedings. This paragraph shall not  
28 diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this

1 Consent Judgment.

2 2. Representations of NutriBiotic

3 2.1 NutriBiotic has provided a declaration under penalty of perjury to the Attorney  
4 General, representing as follows:

- 5 a. Prior to March 18, 2008 NutriBiotic was not aware of the presence of 1,4-dioxane  
6 in any amount in its Fresh Fruit Shower Gel.
- 7 b. Upon learning of the alleged presence of 1,4-dioxane in its Fresh Fruit Shower  
8 Gel, NutriBiotic commissioned testing of its product.
- 9 c. On June 10, 2008, NutriBiotic stopped shipment of its Fresh Fruit Shower Gel  
10 into California. As of June 10, 2008, all NutriBiotic Fresh Fruit Shower Gel  
11 shipped into California have been reformulated so that they no longer contain any  
12 ingredient known to produce 1,4-dioxane.

13 3. Injunctive Relief - Warning Program

14 3.1 1,4-Dioxane Reducing Measures: Except as provided below, all Fresh Fruit Shower  
15 Gel shipped by NutriBiotic for sale in California or to a third party for retail sale in California  
16 after June 10, 2008, shall contain no more than 10 parts per million ("ppm") of 1,4-dioxane.

17 3.2 Clear and Reasonable Warning: In the event that NutriBiotic ships Fresh Fruit Shower  
18 Gel that contains more than 10 ppm of 1,4-dioxane for sale in California or to a third party for  
19 retail sale in California, NutriBiotic shall provide a clear and reasonable warning to consumers in  
20 the manner described below, that the Fresh Fruit Shower Gel contains a chemical known to the  
21 State of California to cause cancer.

22 a. Product Labeling: NutriBiotic shall, at the point of manufacture or prior to  
23 shipment to California, affix to or put on the product container, cap, label, unit package, or  
24 (where the Fresh Fruit Shower Gel is too small to receive a warning directly on the container) on  
25 the display of such Fresh Fruit Shower Gels that are intended for sale in California, the following  
26 warning:

27 **WARNING:** This product contains a chemical known to the State of California to cause  
28 cancer.

1 Such warning shall be prominently affixed to or printed on the Fresh Fruit Shower Gel with such  
2 conspicuousness, as compared with other words, statements, designs or devices on the label as to  
3 render it likely to be read and understood by an ordinary individual under customary conditions  
4 of purchase or use. The requirement for product labeling, set forth herein is imposed pursuant to  
5 the terms of this Consent Judgment. The parties recognize that product labeling is not the  
6 exclusive method of providing a warning under Proposition 65 and its implementing regulations.

7       3.3 Testing Requirements: Beginning thirty days after the Effective date of this agreement,  
8 and continuing for one year thereafter, NutriBiotic shall, on a quarterly basis, test randomly  
9 selected samples from each lot of Fresh Fruit Shower Gels to ensure that the levels of 1,4-  
10 dioxane are no more than 10 ppm. Testing shall be performed by an ISO 17025 accredited  
11 laboratory, accredited for the analysis of volatile organics in water. The laboratory shall conduct  
12 the testing according to the protocol attached as Exhibit A hereto.

13       3.4 As long as NutriBiotic does not reformulate its Fresh Fruit Shower Gel to contain  
14 any chemicals that can degrade to produce 1,4-dioxane as a contaminant, it need not continue  
15 testing after the one year time period set forth above.

16       3.5 In the event that NutriBiotic reformulates its Fresh Fruit Shower Gel to contain  
17 any chemical that can degrade to produce 1,4-dioxane as a contaminant, NutriBiotic shall resume  
18 testing and shall, on a quarterly basis, test randomly selected samples from each lot of Fresh Fruit  
19 Shower Gel. Testing shall be performed consistent with the requirements of paragraph 3.3  
20 above. NutriBiotic shall continue testing for a period of two years after the date of reformulation.  
21 NutriBiotic may cease testing after two years as long as no samples of the Fresh Fruit Shower  
22 Gel have tested in excess of 10 ppm 1,4-dioxane. In the event that, after testing has ceased,  
23 NutriBiotic changes the formulation or processing of the Fresh Fruit Shower Gel in any manner  
24 that will affect the levels of 1,4-dioxane, NutriBiotic shall resume the testing process as set forth  
25 above.

26       3.6 NutriBiotic shall retain copies of its test data for a period of four years from the date  
27 of testing and shall turn over all test data to the Attorney General upon written request.  
28

1           4.       Settlement Payments - Civil Penalties

2                   4.1       Within thirty (30) days after the Effective Date of this Consent Judgment,  
3 as full, final and complete satisfaction of all claims for civil penalties or restitution for the  
4 alleged violations of Proposition 65 as regards 1,4-dioxane in Fresh Fruit Shower Gel up to and  
5 including the date of entry of this Consent Judgment, NutriBiotic shall pay the sum of one  
6 thousand, two hundred and fifty dollars (\$1,250.00) by mailing a check, payable to the "Office of  
7 the Attorney General of the State of California" (Attn: Susan S. Fiering, Deputy Attorney  
8 General), 1515 Clay Street, 20<sup>th</sup> Floor, P.O. Box 70550, Oakland, CA 94612 . Payment of the  
9 preceding amount shall be made as a civil penalty pursuant to Health & Safety Code Section  
10 25249.7(b) and 25249.11(c). Making this payment shall not be construed as an admission by  
11 NutriBiotic of any fact, conclusion of law, or violation of law, nor shall compliance with the  
12 Consent Judgment constitute or be construed as an admission by NutriBiotic of any fact,  
13 conclusion of law, or violation of law.

14           5.       Settlement Payments - Payment of Costs and Fees

15                   5.1       Within thirty (30) days after the Effective Date of this Consent Judgment,  
16 NutriBiotic shall pay the amount of one thousand, two hundred and fifty dollars (\$1,250) as  
17 reimbursement of the costs incurred by the Carrick Law Group in investigating and sending a  
18 sixty day notice on this matter, by mailing a check, payable to the Carrick Law Group, at Carrick  
19 Law Group, 350 South Grand Avenue, Suite 2930, Los Angeles, CA 90071.

20           6.       Additional Enforcement Actions; Continuing Obligations

21                   6.1.     By entering into this Consent Judgment, the People do not waive any right to take  
22 further enforcement actions on any violations not covered by the Complaint or this Consent  
23 Judgment. Nothing in this Consent Judgment shall be construed as diminishing NutriBiotic's  
24 continuing obligation to comply with Proposition 65 or the Unfair Competition Law in its future  
25 activities.

26           7.       Enforcement of Consent Judgment

27                   7.1.     The People may, by motion or order to show cause before the Superior Court of  
28 Alameda enforce the terms and conditions contained in this Consent Judgment. In any action

1 brought by the People to enforce this Consent Judgment, the People may seek whatever fines,  
2 costs, penalties or remedies as provided by law for failure to comply with the Consent Judgment.  
3 Where said failure to comply constitutes future violations of Proposition 65 or other laws,  
4 independent of the Consent Judgment and/or those alleged in the Complaint, the People are not  
5 limited to enforcement of this Consent Judgment but may seek in another action whatever fines,  
6 costs, penalties or remedies are provided by law for failure to comply with Proposition 65 or  
7 other laws. However, the rights of NutriBiotic to defend itself and its actions in law or equity  
8 shall not be abrogated or reduced in any fashion by the terms of this paragraph, except that  
9 NutriBiotic shall not contest its obligation to comply with this Consent Judgment as long as this  
10 Consent Judgment remains in effect.

11 8. Application of Consent Judgment

12 8.1 The Consent Judgment shall apply to, be binding upon and inure to the benefit of,  
13 the parties, their divisions, subdivisions, subsidiaries, and affiliates and the successors or assigns  
14 of each of them. Unless otherwise provided herein, any change in ownership, partnership status  
15 or corporate status of NutriBiotic, including, but not limited to, any transfer of assets or real or  
16 personal property, shall in no way alter NutriBiotic's responsibilities under this Consent  
17 Judgment and NutriBiotic shall be responsible and shall remain responsible for carrying out all  
18 activities required of it under this Consent Judgment.

19 9. Effective Date

20 9.1 The "Effective Date" of this Consent Judgment shall be the date upon which this  
21 Court enters this Consent Judgment.

22 10. Authority to Stipulate to Consent Judgment

23 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
24 by the party he or she represents to enter into this Consent Judgment on behalf of the party  
25 represented and legally to bind that party.

26 11. Claims Covered

27 11.1 Except as provided elsewhere herein, this Consent Judgment is a final and binding  
28 resolution between the People and NutriBiotic of any and all alleged violations of Proposition 65

1 or the Unfair Competition Law, Business and Professions Code Sections 17200 et seq. arising  
2 from NutriBiotic's failure to provide clear and reasonable warnings pursuant to Proposition 65 of  
3 exposure to 1,4-dioxane from use of NutriBiotic's Fresh Fruit Shower Gels that were committed  
4 by NutriBiotic or by any entity within its respective chain of distribution prior to the effective  
5 date of this agreement, including, but not limited to, distributors, wholesalers and retailers of any  
6 of NutriBiotic's Fresh Fruit Shower Gels. Compliance with the terms of this Consent Judgment  
7 by NutriBiotic constitutes compliance with Proposition 65 as to 1,4-dioxane in Fresh Fruit  
8 Shower Gels.

9 12. Retention of Jurisdiction

10 12.1 This Court shall retain jurisdiction of this matter to implement the Consent  
11 Judgment.

12 13. Entire Agreement

13 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
14 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,  
15 negotiations, commitments and understandings related hereto. No representations, oral or  
16 otherwise, express or implied, other than those contained herein have been made by any party  
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
18 deemed to exist or to bind any of the parties.

19 14. Modification

20 14.1 This Consent Judgment may be modified from time to time by express written  
21 agreement of NutriBiotic and the Attorney General with the approval of the Court, or by an order  
22 of this Court.

23 15. Execution in Counterparts

24 15.1 This Consent Judgment may be executed in counterparts, which taken together  
25 shall be deemed to constitute one and the same document.

26 16. Entry of Stipulation for Entry of Consent Judgment Required

27 16.1 This Stipulation for Entry of Consent Judgment shall be null and void, and be  
28 without any force or effect, unless entered by the Court in this matter. If the Stipulation for Entry

1 of Consent Judgment is not entered by the Court, the execution of this Stipulation for  
2 Entry of Consent Judgment by any Settling Defendant shall not be construed as an admission by  
3 a Settling Defendant of any fact, issue of law or violation of law.

4 IT IS SO STIPULATED:

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

EDMUND G. BROWN JR., Attorney General  
of the State of California  
KEN ALEX  
Senior Assistant Attorney General  
EDWARD G. WEIL  
Supervising Deputy Attorney General  
SUSAN S. FIERING  
Deputy Attorney General

10

By: \_\_\_\_\_

SUSAN S. FIERING  
Deputy Attorney General  
Attorneys for the People of the State of California  
ex rel. Edmund G. Brown Jr., Attorney General of  
the State of California

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

NUTRITION RESOURCES, INC. DBA  
NUTRIBIOTIC

16

By: 

18

Its: President

19 APPROVED AS TO FORM:

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

SIDEMAN & BANCROFT LLP

23

By: \_\_\_\_\_

CONSTANCE YU, Esq.  
Counsel for Nutrition Resources, Inc., dba  
NutriBiotic

25 IT IS SO ORDERED:

26 Dated: DEC 15 2008

**STEVEN A. BRICK**   
JUDGE, SUPERIOR COURT, COUNTY  
OF ALAMEDA

28



1 of Consent Judgment is not entered by the Court, the execution of this Stipulation for  
2 Entry of Consent Judgment by any Settling Defendant shall not be construed as an admission by  
3 a Settling Defendant of any fact, issue of law or violation of law.


4 IT IS SO STIPULATED:

5 Dated: 11/14/08

EDMUND G. BROWN JR., Attorney General  
of the State of California  
KEN ALEX  
Senior Assistant Attorney General  
EDWARD G. WEIL  
Supervising Deputy Attorney General  
SUSAN S. FIERING  
Deputy Attorney General

9

10

By:   
SUSAN S. FIERING  
Deputy Attorney General  
Attorneys for the People of the State of California  
ex rel. Edmund G. Brown Jr., Attorney General of  
the State of California

11

12

13

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

NUTRITION RESOURCES, INC. DBA  
NUTRIBIOTIC

15

16

By: \_\_\_\_\_

17

18

Its: \_\_\_\_\_

19


20 APPROVED AS TO FORM:

Dated: Nov. 13, 2008

SIDEMAN & BANCROFT LLP

21

22

By:   
CONSTANCE YU, Esq.  
Counsel for Nutrition Resources, Inc., dba  
NutriBiotic

23

24

25 IT IS SO ORDERED:

26

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

\_\_\_\_\_  
JUDGE, SUPERIOR COURT, COUNTY  
OF ALAMEDA

28

**EXHIBIT A**

## PROTOCOL

### Summary of Method:

An aliquot of sample (~1 g) is accurately weighed into a vial with 5 mL water and one gram of sodium sulfate. Internal standard (5  $\mu\mu\text{g}$  1,4-Dioxane-d8) is added. The vial is capped and heated at 95 °C for 60 minutes. A one mL aliquot of the headspace over the sample is analyzed by direct injection using the following GCMS conditions or equivalent.

### GCMS Conditions

Instrument: Agilent 5973N

Column: 25 m x 0.20 mm HP-624, 1.12 micron film

Column Temp: 40 °C (hold 3 min) to 100 °C at 10 °C/min, then to 180 °C at 25 °C/min (hold 5 min)

Injector Temp: 220 °C

Mass Range: Selected ion monitoring: masses 43, 58, and 88 (dioxane); 64 and 96 (dioxane-d8); 1.72 cycles per second

### Quality control shall include at a minimum

1. Calibration using a blank and 4 standards over the range of 0.5 to 10 micrograms of 1,4-dioxane with a regression fit R squared >0.995.
2. A method blank analyzed just prior to the samples must be free of 1,4-dioxane (<1 ppm)
3. Continuing calibration standards should be analyzed after every 10 or fewer samples, and the result must be within 10% of the initial calibration.
4. With each batch of 20 or fewer samples, one of the samples must be analyzed in duplicate and as a spiked sample. QC limits for duplicates which exceed 5 ppm is <25% relative percent difference. QC limits for spiked samples is 75-125% recovery when the amount spiked is greater than or equal to the background in the unspiked sample.