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Michael Freund SBN 99687  
Law Office of Michael Freund  
1915 Addison Street  
Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

Attorney for Plaintiff  
David Steinman

**ENDORSED  
FILED**  
San Francisco County Superior Court

JUL 30 2010

CLERK OF THE COURT  
BY: MELINKA JONES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

DAVID STEINMAN,  
  
Plaintiff  
  
v.  
  
THE PROCTER AND GAMBLE  
DISTRIBUTING LLC and DOES 1-100  
  
Defendants..

Case No. CGC-10-500758

~~PROPOSED~~  
CONSENT JUDGMENT

Date: July 30, 2010  
Time: 9:30 a.m.  
Dept.: 302

**I. INTRODUCTION**

1.1 On or about June 2, 2010, Plaintiff David Steinman ("Plaintiff") as a private attorney general and in the public interest filed a Complaint for Injunctive and Declaratory Relief and Civil Penalties against Defendant The Procter & Gamble Distributing LLC ("Procter & Gamble"). The Complaint alleges that Procter & Gamble violated Health and Safety Code section 25249.6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as "Proposition 65,") through the sale of hair care products under the name Herbal Essences and Head and Shoulders by failing to provide a clear and reasonable warning.

1.2 The Complaint is based on allegations contained in Notices of Violation dated June 29, 2009, and December 1, 2009, and amended Notice of Violation dated March 29, 2010 served on

1 the California Attorney General, other public enforcers and Procter & Gamble. A true and correct  
2 copy of the Notices of Violation is attached hereto as Exhibit A.

3 1.3 Plaintiff David Steinman is an individual interested in the enforcement of Proposition  
4 65.

5 1.4 Defendant Procter & Gamble is a business entity that employs ten or more persons in  
6 the course of doing business for purposes of Proposition 65.

7 1.5 The products that are covered by this Consent Judgment are different versions of hair  
8 care products manufactured and/or distributed by Procter & Gamble as identified in Exhibit B to this  
9 Consent Judgment (collectively "Covered Products").

10 1.6 The Parties enter into this Consent Judgment in order to achieve a full settlement of  
11 disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding  
12 prolonged litigation. Plaintiff David Steinman has diligently prosecuted this matter and is settling  
13 this case in the public interest.

14 1.7 Procter & Gamble denies the material factual and legal allegations contained in  
15 Plaintiff's Notices and Complaint and maintains that all Covered Products that Procter & Gamble has  
16 manufactured, distributed or offered for sale or use in California have been and are in compliance  
17 with all laws, including Proposition 65. Nothing in the Consent Judgment shall be construed as an  
18 admission by Procter & Gamble of any fact, issue of law or violation of law, nor shall compliance  
19 with the Consent Judgment constitute or be construed as an admission by Procter & Gamble of any  
20 fact, issue of law or violation of law, at any time, for any purpose. Nothing in the Consent Judgment  
21 shall prejudice, waive or impair any right, remedy or defense that Procter & Gamble may have in any  
22 other or further legal proceedings. Nothing in the Consent Judgment or any document referred to  
23 herein, shall be construed as giving rise to any presumption or inference of admission or concession  
24 by Procter & Gamble as to any fault, wrongdoing or liability whatsoever.

25 **II. JURISDICTION AND VENUE**

26 2.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over the subject matter of this action and personal jurisdiction over the allegations of  
28 violation contained in the Notices and Complaint and personal jurisdiction over the Parties as to the

1 dioxane, allowing for normal analytical variability as defined by the quality control methodology set  
2 forth in Exhibit C. If Procter & Gamble cannot, within ninety (90) days of the verification date,  
3 ensure the product contains no more than 10 ppm of 1,4-dioxane, allowing for normal analytical  
4 variability as defined by the quality control methodology set forth in Exhibit C, then within 120 days  
5 of the verification date, Procter & Gamble may elect either to discontinue the distribution for sale in  
6 California of that specific product or to provide a clear and reasonable warning on any such lots in  
7 Procter & Gamble's possession which are intended for sale within California with the following  
8 language:

9 "WARNING: This product contains a chemical known to the State of California to cause  
10 cancer."

11 In the event that this warning is required, the warning shall be prominently affixed to or  
12 printed on the container, cap, label or unit package of Covered Products so as to be clearly  
13 conspicuous, as compared with other statements or designs on the label as to render it likely to be  
14 read and understood by an ordinary purchaser or user of the product.

15 3.3 **Testing**

16 3.3.1 Commencing July 1, 2010, Procter & Gamble shall, on a quarterly basis,  
17 randomly select one sample of each Covered Product for testing to confirm that the product conforms  
18 to the reformulation standard set out in section 3.1. If any sample yields a test result of greater than  
19 10 ppm of 1,4-dioxane, then Procter & Gamble will retest the same product in duplicate to determine  
20 the impact of normal analytical variability, and Procter & Gamble will also test two (2) additional  
21 random samples of that specific Covered Product.

22 Procter & Gamble shall perform all testing pursuant to this Consent Judgment using the  
23 protocol set out in Exhibit C to this document.

24 Procter & Gamble shall be required to conduct no further testing of a specific Covered  
25 Product as long as that product meets the reformulation standard set out in section 3.1.1 for four  
26 consecutive quarters.

27 3.3.2 If any Covered Product is found during the first four (4) consecutive quarters  
28 to not meet the reformulation standards set out in section 3.1, Procter & Gamble shall continue to test

1 that specific Covered Product(s) for an additional four (4) consecutive quarters or until the specific  
2 Covered Product meets the reformulation standard set out in Section 3.1 for four (4) consecutive  
3 quarters, which ever occurs first.

4 If after eight (8) quarters of testing, any specific Covered Product fails to comply with the  
5 reformulation standard set out in section 3.1. for four (4) consecutive quarters, then Procter &  
6 Gamble shall, within sixty (60) days of the last test, provide the warning set out in section 3.2, above  
7 or discontinue distribution for sale in California of that specific Covered Product.

8 Procter & Gamble shall retain copies of its test data obtained pursuant to sections 3.3.1 and  
9 3.3.2 for a period of three years from the date testing commenced and shall provide all test data to  
10 David Steinman upon written request and consummation of a satisfactory confidentiality agreement  
11 that permits enforcement of this Consent Judgment and protects the information shared from non-  
12 mandatory public disclosure.

#### 13 **IV. PAYMENT**

14 In full and final satisfaction of David Steinman's costs of litigation, attorney's fees and all  
15 other expenses, Procter & Gamble shall make a total payment of \$100,000.00, payable within  
16 fifteen (15) business days of receiving the Notice of Entry of Consent Judgment. Said payments shall  
17 be for the following:

18 A. \$72,144.00 payable to Freedom Press which includes:

19 i) further testing of consumer products for 1,4-dioxane, formaldehyde and other toxic  
20 chemicals; and research into alternatives to the use of toxic chemicals, the and promotion of those  
21 alternatives; and ii) reimbursement of out of pocket expenses of \$26,425.00. The Tax Identification  
22 No. for Freedom Press is 95-4736088.

23 B. \$27,856.00 payable to Michael Freund as reimbursement of David Steinman's attorney's  
24 fees and for reimbursement of costs advanced in this case.

25 Procter & Gamble's payments shall be mailed to the Law Office of Michael Freund.

#### 26 **V. RELEASE AND CLAIMS COVERED**

27 This Consent Judgment entered by the Court is a final and binding resolution between and  
28 among, David Steinman, his past or current agents, representatives, employees, attorneys, successors

1 and assigns, acting on behalf of the general public and the public interest pursuant to California  
2 Health and Safety Code section 25249.7(d), and Procter & Gamble, and each of its parents,  
3 subsidiaries, affiliates, divisions, subdivisions, distributors, wholesalers, customers, officers,  
4 directors, shareholders, employees, agents, attorneys, successors and assigns, of any and all claims,  
5 known or unknown, that have been or could have been asserted by David Steinman against Procter &  
6 Gamble in the Complaint in regard to Covered Products, up to and including the date of entry of  
7 Consent Judgment arising from the presence of 1,4-dioxane in Covered Products.

8       Except for such rights and obligations as have been created under this Consent Judgment,  
9 Plaintiff David Steinman, on his own behalf and on behalf of his past or current agents,  
10 representatives, employees, attorneys, successors and assigns, and in bringing an action "in the public  
11 interest" pursuant to California Health and Safety Code Section 25249.7 (d) with respect to the  
12 matters alleged in the this lawsuit, does hereby fully, completely, finally and forever release,  
13 relinquish and discharge Procter & Gamble and its respective parents, subsidiaries, affiliates,  
14 divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, suppliers,  
15 manufacturers, distributors, retailers, successors and assigns ("released parties") from any and all  
16 claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages,  
17 accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of every  
18 nature whatsoever, including Proposition 65 claims, which Plaintiff David Steinman has or may have  
19 against the said released parties, arising directly or indirectly out of any fact or circumstance  
20 occurring prior to the date upon which the Consent Judgment becomes final, relating to the Covered  
21 Products as identified in the Notices of Violation dated June 20, 2009 and December 1, 2009 and  
22 Amended Notice of Violation dated March 29, 2010, and the filed Complaint.

23       It is the intention of the Parties to this release that, upon entry of this Consent Judgment by the  
24 Court, this Consent Judgment shall be effective as a full and final accord and satisfaction and Release  
25 of every released claim up to and including the date of entry of the Consent Judgment. In furtherance  
26 of this intention, Plaintiff acknowledges that he is familiar with California Civil Code section 1542,  
27 which provides as follows:

28                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS

1 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
2 ~~EXIST IN HIS FAVOR~~ AT THE TIME OF EXECUTING THE  
3 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
4 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
5 DEBTOR.

6 David Steinman, on his own behalf and on behalf of his past or current agents,  
7 representatives, employees, attorneys, successors and assigns, hereby waives and relinquishes all of  
8 the rights and benefits that Plaintiff has, or may have, under California Civil Code section 1542 (as  
9 well as any similar rights and benefits which they may have by virtue of any statute or rule of law in  
10 any other state or territory of the United States). David Steinman hereby acknowledges that he may  
11 hereafter discover facts in addition to, or different from, those which he now knows or believes to be  
12 true with respect to the subject matter of this Consent Judgment and the Consent Judgment entered by  
13 the Court and the released claims, but that notwithstanding the foregoing, it is David Steinman's  
14 intention hereby to fully, finally, completely and forever settle and release each, every and all  
15 released claims, and that in furtherance of such intention, the release herein given shall be and remain  
16 in effect as a full and complete general release, notwithstanding the discovery or existence of any  
17 such additional or different facts. David Steinman hereby warrants and represents to Procter &  
18 Gamble that (a) he has not previously assigned any released claim, and (b) he has the right, ability  
19 and power to release each released claim.

20 **VI. CONTINUING OBLIGATIONS**

21 Nothing herein shall be construed as diminishing Procter & Gamble's continuing obligations  
22 to comply with Proposition 65. Further, in the event of any allegation of failure to comply, both  
23 parties shall use best efforts to resolve such differences prior to seeking judicial intervention.

24 **VII. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

25 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions  
26 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable provisions  
27 shall not be adversely affected.  
28

reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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: June 29, 2009



Michael Freund  
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 29, 2009 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2009 at Berkeley, California.



Michael Freund

## SERVICE LIST

- District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612
- District Attorney of Colusa County  
547 Market Street  
Colusa, CA 95932
- District Attorney of Contra Costa County  
627 Ferry Street  
Martinez, CA 94553
- District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120
- District Attorney of Del Norte County  
450 H Street, Ste 171  
Crescent City, CA 95531
- District Attorney of Amador County  
708 Court Street, #202  
Jackson, CA 95842
- District Attorney of Butte County  
25 County Center Drive  
Oroville, CA 95965
- District Attorney of El Dorado County  
515 Main Street  
Placerville, CA 95667
- District Attorney of Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249
- District Attorney of Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721
- District Attorney of Glenn County  
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Willows, CA 95988
- District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93230
- District Attorney of Lake County  
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Lakeport, CA 95453
- District Attorney of Humboldt County  
825 5th Street  
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- District Attorney of Imperial County  
939 Main Street  
El Centro, CA 92243
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220 S. Lassen St., Ste 8  
Susanville, CA 96130
- District Attorney of Inyo County  
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Los Angeles, CA 90012
- District Attorney of Madera County  
209 West Yosemite Avenue  
Madera, CA 93637
- District Attorney of Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301
- District Attorney of Marin County  
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San Rafael, CA 94903
- District Attorney of Mono County  
P.O. Box 817  
Bridgeport, CA 93517
- District Attorney of Mariposa County  
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Mariposa, CA 95338
- District Attorney of Monterey County  
230 Church Street, Bldg. 2  
Salinas, CA 93901
- District Attorney of Mendocino County  
P.O. Box 1000  
Ukiah, CA 95482
- District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559
- District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340
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201 Church St., Suite 8  
Nevada City, CA 95959
- District Attorney of Orange County  
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Santa Ana, CA 92701
- District Attorney of Modoc County  
204 S Court Street  
Aituras, CA 96101-4020
- District Attorney of Placer County  
11562 "B" Avenue  
Auburn, CA 95603
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San Bernardino, CA 92415
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Quincy, CA 95971
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330 West Broadway, Suite 1320  
San Diego, CA 92101
- District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501
- District Attorney of San Francisco County  
850 Bryant Street, Rm 325  
San Francisco, CA 94103
- District Attorney of Sacramento County  
901 "G" Street  
Sacramento, CA 95814
- District Attorney of San Joaquin County  
P.O. Box 990  
Stockton, CA 95201
- District Attorney of San Luis Obispo County  
1050 Monterey St, Room 450  
San Luis Obispo, CA 93408
- District Attorney of San Benito County  
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District Attorney of San Mateo  
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Redwood City, CA 94063

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Downieville, CA 95936

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1105 Santa Barbara Street  
Santa Barbara, CA 93101

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Yreka, CA 96097

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San Jose, CA 95110

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Santa Cruz, CA 95060

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1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney of Stanislaus  
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PO BOX 442  
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446 Second Street  
Yuba City, CA 95991

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Red Bluff, CA 96080

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301 Second Street  
Woodland, CA 95695

District Attorney of Trinity County  
P.O. Box 310  
11 Court St.  
Weaverville, CA 96093

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216 Fifth Street  
Marysville, CA 95901

District Attorney of Tulare County  
221 S. Mooney Ave, Room 224  
Visalia, CA 93291

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County  
423 No. Washington Street  
Sonora, CA 95370

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

Los Angeles City Attorney's Office  
800 City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue #1620  
San Diego, CA 92101

San Francisco City Attorney's  
Office  
City Hall, Room 234  
San Francisco, CA 94102

California Attorney General's  
Office  
Attention: Proposition 65  
Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612

Alan G. Lafley  
The Proctor & Gamble Company  
Chairman, President & CEO  
1 Proctor & Gamble Plaza  
Cincinnati, OH 45202

MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

December 1, 2009

Re: Notice of Violation Against The Proctor & Gamble Company for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include *Diet for a Poisoned Planet* (1990, 2007); *The Safe Shopper's Bible* (1995); *Living Healthy in a Toxic World* (1996); and *Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce exposure to 1,4 Dioxane.

This letter constitutes notification that The Proctor and Gamble Company has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to 1,4 Dioxane. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on January 1, 1988. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through dermal contact with the products. Additional exposures may occur through oral and inhalation exposure.

Proctor & Gamble is exposing people to 1,4 Dioxane from the following products: Clairol Herbal Essences Body Envy Volumizing Shampoo with a fusion of white nectarine and pink coral flower; Tide TOTALCARE™ Liquid Laundry Detergent - Renewing Rain; and Head and Shoulders advanced Extra Volume Shampoo.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Proctor & Gamble is in violation of Proposition 65 because it failed to provide a warning to persons using their products that they are being exposed to 1,4 Dioxane. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us.

Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to be the initials 'MF' with a stylized flourish.

Michael Freund

cc: David Steinman

## CERTIFICATE OF MERIT

### Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to 1,4 Dioxane from its consumer product. Please refer to the Notice of Violation for additional details regarding the alleged violations.
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 alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the primary chemist who conducted the laboratory testing for 1,4 Dioxane of this consumer product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice exposes persons to 1,4 Dioxane through dermal contact. There may be additional exposures through inhalation and oral exposure.
4. Based on my consultation with an experienced scientist in this field, the results of laboratory testing, as well as the published studies on 1,4-Dioxane, it is clear that there is sufficient evidence that human exposures exist from exposure to the products from the noticed party.

Furthermore, as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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 1, 2009

  
\_\_\_\_\_  
Michael Freund  
Attorney for Center for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On December 2, 2009 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 2, 2009 at Berkeley, California.

MF

Michael Freund

## SERVICE LIST

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District Attorney of Butte County  
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District Attorney of El Dorado County  
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Bridgeport, CA 93517

District Attorney of Mariposa County  
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Mariposa, CA 95338

District Attorney of Monterey County  
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Salinas, CA 93901

District Attorney of Mendocino County  
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Ukiah, CA 95482

District Attorney of Napa County  
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Napa, CA 94559

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney of Nevada County  
201 Church St., Suite 8  
Nevada City, CA 95959

District Attorney of Orange County  
401 Civic Ctr Drive West  
Santa Ana, CA 92701

District Attorney of Modoc County  
204 S Court Street  
Aituras, CA 96101-4020

District Attorney of Placer County  
11562 "B" Avenue  
Auburn, CA 95603

District Attorney of San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

District Attorney of Plumas County  
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Quincy, CA 95971

District Attorney of San Diego County  
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San Diego, CA 92101

District Attorney of Riverside County  
4075 Main Street  
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District Attorney of San Francisco County  
850 Bryant Street, Rm 325  
San Francisco, CA 94103

District Attorney of Sacramento County  
901 "G" Street  
Sacramento, CA 95814

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P.O. Box 990  
Stockton, CA 95201

District Attorney of San Luis Obispo County  
1050 Monterey St, Room 450  
San Luis Obispo, CA 93408

District Attorney of San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney of San Mateo  
County  
400 County Ctr, 3<sup>rd</sup> Fl  
Redwood City, CA 94063

District Attorney of Sierra County  
Courthouse, P.O. Box 457  
Downieville, CA 95936

District Attorney of Santa Barbara  
County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney of Siskiyou County  
P.O. Box 886  
Yreka, CA 96097

District Attorney of Solano County  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

District Attorney of Santa Clara  
County  
70 West Hedding Street, West  
Wing  
San Jose, CA 95110

District Attorney of Santa Cruz  
County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney of Sonoma County  
600 Administration Drive, Room  
212J  
Santa Rosa, CA 95403

District Attorney of Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney of Stanislaus  
County  
800 11<sup>th</sup> Street, Room 200  
PO BOX 442  
Modesto, CA 95353

District Attorney of Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney of Ventura County  
800 South Victoria Ave  
Ventura, CA 93009

District Attorney of Tehama County  
P.O. Box 519  
Red Bluff, CA 96080

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Trinity County  
P.O. Box 310  
11 Court St  
Weaverville, CA 96093

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

District Attorney of Tulare County  
221 S. Mooney Ave, Room 224  
Visalia, CA 93291

District Attorney of Tuolumne  
County  
423 No. Washington Street  
Sonora, CA 95370

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

Los Angeles City Attorney's Office  
800 City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue #1620  
San Diego, CA 92101

San Francisco City Attorney's  
Office  
City Hall, Room 234  
San Francisco, CA 94102

California Attorney General's  
Office  
Attention: Proposition 65  
Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612

Alan G. Lafley  
Chairman, President & CEO  
The Proctor & Gamble Company  
1 Proctor & Gamble Plaza  
Cincinnati, OH 45202

MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

March 29, 2010

Re: Amended Notice of Violation Against The Proctor & Gamble Company for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include *Diet for a Poisoned Planet* (1990, 2007); *The Safe Shopper's Bible* (1995); *Living Healthy in a Toxic World* (1996); and *Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce exposure to 1,4-dioxane.

This letter constitutes notification that The Proctor and Gamble Company has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to 1,4-dioxane. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on January 1, 1988. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through dermal contact with the products. Additional exposures may occur through oral and inhalation exposure.

Proctor & Gamble is exposing people to 1,4-dioxane from products in the Herbal Essences hair care product line, including but not limited to Clairol Herbal Essences Long Term Relationship Shampoo and Body Envoy Volumizing Shampoo.

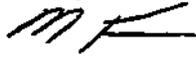
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Proctor & Gamble is in violation of Proposition 65 because it failed to provide a warning to persons using their products that they are being exposed to 1,4-dioxane. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of

Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'MF' with a horizontal line extending to the right.

Michael Freund

cc: David Steinman

## CERTIFICATE OF MERIT

### Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Amended Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Amended Notice of Violation alleges that the party identified has exposed persons in California to 1,4-dioxane from its consumer products. Please refer to the Amended Notice of Violation for additional details regarding the alleged violations.
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 alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the primary chemist who conducted the laboratory testing for 1,4- dioxane of these consumer products and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Amended Notice of Violation exposes persons to 1,4- dioxane through dermal contact. There may be additional exposures through inhalation and oral exposure.
4. Based on my consultation with an experienced scientist in this field, the results of laboratory testing, as well as the published studies on 1,4-dioxane, it is clear that there is sufficient evidence that human exposures exist from exposure to the products from the noticed party. Furthermore,

as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: March 29, 2010

  
\_\_\_\_\_  
Michael Freund  
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On March 29, 2010 I served the within:

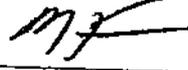
Amended Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on March 29, 2010 at Berkeley, California.



Michael Freund

## SERVICE LIST

- District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612
- District Attorney of Colusa County  
547 Market Street  
Colusa, CA 95932
- District Attorney of Contra Costa County  
725 Court Street, Room 402  
Martinez, CA 94553
- District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120
- District Attorney of Del Norte County  
450 H Street, Ste 171  
Crescent City, CA 95531
- District Attorney of Amador County  
708 Court Street, #202  
Jackson, CA 95642
- District Attorney of Butte County  
25 County Center Drive  
Oroville, CA 95965
- District Attorney of El Dorado County  
515 Main Street  
Placerville, CA 95667
- District Attorney of Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249
- District Attorney of Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721
- District Attorney of Glenn County  
P.O. Box 430  
Willows, CA 95988
- District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93230
- District Attorney of Lake County  
255 N. Forbes Street  
Lakeport, CA 95453
- District Attorney of Humboldt County  
825 5th Street  
Eureka, CA 95501
- District Attorney of Imperial County  
939 W. Main Street  
El Centro, CA 92243
- District Attorney of Lassen County  
220 S. Lassen St., Ste 8  
Susanville, CA 96130
- District Attorney of Inyo County  
P.O. Drawer D  
Independence, CA 93526
- District Attorney of Los Angeles County  
210 W. Temple Street, Room 346  
Los Angeles, CA 90012
- District Attorney of Madera County  
209 West Yosemite Avenue  
Madera, CA 93637
- District Attorney of Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301
- District Attorney of Marin County  
3501 Civic Center Dr., Room 130  
San Rafael, CA 94903
- District Attorney of Mono County  
P.O. Box 817  
Bridgeport, CA 93517
- District Attorney of Mariposa County  
P.O. Box 730  
Mariposa, CA 95338
- District Attorney of Monterey County  
PO Box 1131  
Salinas, CA 93902
- District Attorney of Mendocino County  
P.O. Box 1000  
Ukiah, CA 95482
- District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559
- District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340
- District Attorney of Nevada County  
201 Church St., Suite 8  
Nevada City, CA 95959
- District Attorney of Orange County  
401 Civic Ctr Drive West  
Santa Ana, CA 92702
- District Attorney of Modoc County  
PO Box 1171  
Alturas, CA 96101-4020
- District Attorney of Placer County  
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~~Autumn, CA 95603~~ Roseville, CA 95678
- District Attorney of San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004
- District Attorney of Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971
- District Attorney of San Diego County  
330 West Broadway, Suite 1320  
San Diego, CA 92101
- District Attorney of Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501
- District Attorney of San Francisco County  
850 Bryant Street, Rm 325  
San Francisco, CA 94103
- District Attorney of Sacramento County  
901 "G" Street  
Sacramento, CA 95814
- District Attorney of San Joaquin County  
P.O. Box 990  
Stockton, CA 95201
- District Attorney of San Luis Obispo County  
1050 Monterey St, Room 450  
San Luis Obispo, CA 93408
- District Attorney of San Benito County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023
- District Attorney of San Mateo County  
400 County Ctr, 3rd Fl  
Redwood City, CA 94063

EXHIBIT B

**Exhibit B**  
**COVERED PRODUCTS**

**Herbal Essences Products:**

Hello Hydration  
Hello Hydration 2in1  
Body Envy  
Body Envy 2in1  
Reconditioning Hyrdalicious  
Self Targeting Hydralicious  
Featherweight Hydralicious  
Long Term Relationship  
Color Me Happy  
Color Me Happy 2in1  
Drama Clean  
Dangerously Straight  
Dangerously Straight 2in1  
None of Your Frizziness  
Tousle Me Softly  
Totally Twisted  
Breaks Over  
Degunkify

**Head & Shoulders Product:**

Extra Volume Shampoo (noticed as "advanced extra volume shampoo")

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EXHIBIT C

## EXHIBIT C

### 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  $\mu\text{g}$  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.