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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 ENVIRONMENTAL RESEARCH CENTER,
16 a California non-profit corporation,

17 Plaintiff,

18 v.

19 ADVOCARE INTERNATIONAL, L.P. and
20 DOES 1-100,

21 Defendants.

CASE NO. RG13662025

[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: January 3, 2013

Trial Date: Not Set

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Case No. CIV1105277

[PROPOSED] STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER

1 **1. INTRODUCTION**

2 **1.1** On January 3, 2013, Plaintiff Environmental Research Center ("ERC"), a non-
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing
4 a Complaint for Injunctive and Declaratory relief and Civil Penalties pursuant to the provisions
5 of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"), against
6 AdvoCare International, L.P. and DOES 1-100 ("AdvoCare"). In this action, ERC alleges that
7 the products manufactured, distributed or sold by AdvoCare, as more fully described below,
8 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
9 that such products expose consumers at a level requiring a Proposition 65 warning. These
10 products are: Formula W; ThermoPlus; Carb Ease Herbal Dietary Supplement; Immuno Guard;
11 Meal Replacement Shake, Chocolate; Performance Elite, Post-Workout Recovery, Chocolate;
12 Performance Elite, Muscle Gain, Chocolate; Seasonal Support; Oasis Blueberry Splash; Herbal
13 Cleanse Metabolic Cleansing System Herbal Cleanse tablets; Herbal Cleanse Metabolic Cleansing
14 System Fiber Drink Citrus; and Meal Replacement Shake Berry (collectively "Covered
15 Products"). ERC and AdvoCare are referred to individually as a "Party" or collectively as the
16 "Parties."
17

18 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
19 helping safeguard the public from health hazards by bringing about a reduction in the use and
20 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
21 employees, and encouraging corporate responsibility.

22 **1.3** AdvoCare is a business entity that employed ten (10) or more persons.
23 AdvoCare is a multilevel marketing company that arranges for the distribution and sale of the
24 Covered Products on its website and through distributors.

25 **1.4** The Complaint is based on allegations contained in ERC's Notices of Violation
26 dated April 16, 2010, May 28, 2010, September 24, 2010, January 14, 2011 and June 1, 2011,
27 that were served on the California Attorney General, other public enforcers, and AdvoCare.
28

1 True and correct copies of the Notices of Violation are attached hereto as Exhibit A. More than
2 60-days have passed since these Notices of Violation were mailed and no designated
3 governmental entity has filed a complaint against AdvoCare with regard to the Covered
4 Products or the alleged violations.

5
6 1.5 ERC's Notices of Violation and the Complaint allege that use of the Covered
7 Products expose persons in California to lead without first providing clear and reasonable
8 warnings in violation of California Health and Safety Code section 25249.6. AdvoCare denies
9 all material allegations contained in the Notices of Violation and Complaint and specifically
10 denies that the Covered Products required a Proposition 65 warning or otherwise caused harm
11 to any person. AdvoCare asserts that any detectible levels of lead in the Covered Products are
12 the result of naturally occurring lead levels, as provided for in California Code of Regulations,
13 Title 27, Section 25501(a).

14 1.6 The Parties have entered into this Consent Judgment in order to settle,
15 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
16 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
17 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
18 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
19 manufacturers, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of
20 law, violation of law, fault, wrongdoing, or liability, including without limitation, any
21 admission concerning any alleged violation of Proposition 65. This Consent Judgment shall
22 not be offered or admitted as evidence in any administrative or judicial proceeding or litigation
23 in any court, agency or forum, except with respect to an action seeking to enforce the terms of
24 this Consent Judgment.

25
26 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other or future legal proceeding unrelated to these proceedings.

1 1.8 The Effective Date of this Consent Judgment is the date on which it is entered as
2 a Judgment by this Court.

3 1.9 Since receiving ERC's Notice of Violation, AdvoCare has conducted additional
4 testing on the Covered Products and reformulated several products; including ThermoPlus, Carb
5 Ease Herbal Dietary Supplement, Immuno Guard, and Herbal Cleanse Metabolic Cleansing
6 System Herbal Cleanse Tablets, and also discontinued Seasonal Support.

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8 **2. JURISDICTION AND VENUE**

9 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
10 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
11 over AdvoCare as to the acts alleged in the Complaint, that venue is proper in Alameda County,
12 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
13 all claims which were or could have been asserted in this action based on the facts alleged in the
14 Notices of Violation and the Complaint.

15
16 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

17 3.1 Any Covered Products manufactured after the Effective Date that AdvoCare
18 thereafter sells in California, markets or distributes¹ for sale into California, or offers for sale to
19 a third party for retail sale to California must either: (1) qualify as a "reformulated Covered
20 Product" under Section 3.3 below, or (2) meet the warning requirements set out in Section 3.2,
21 provided that AdvoCare shall have until the later of thirty (30) days after the entry of this
22 consent judgment, or ninety (90) days after the parties fully execute this consent judgment, to
23 provide the warnings required by Section 3.2 below.

24 **3.2 Clear and Reasonable Warnings**

25 If AdvoCare provides a warning for Covered Products pursuant to Section 3.1(2), AdvoCare
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28 ¹ As used in this Consent Judgment, the term "distributes for sale into California" shall
mean to directly ship a Covered Product into California for sale in California or to sell a Covered
Product to a distributor that AdvoCare knows will sell the Covered Product in California.

1 shall provide the following warning:

2 [California Proposition 65] **WARNING: This product contains**
3 **lead, a chemical known to the State of California to cause**
4 **[cancer and] birth defects or other reproductive harm.**

5 AdvoCare shall use the term "cancer and" in the warning only if the maximum daily dose
6 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
7 Section 3.4. The words "California Proposition 65" may be included at AdvoCare's option.

8 AdvoCare shall provide the warning on all of the following: 1) on AdvoCare's checkout page on
9 its website for California consumers; 2) on AdvoCare's insert in boxes of Covered Products
10 shipped to California; and 3) on AdvoCare's receipt/order confirmation e-mailed to California
11 customers for Covered Products. See Exhibits B, C, and D for representative examples of the
12 warning as it will appear on these items. AdvoCare shall not provide any additional Proposition
13 65 language beyond or in addition to the above Proposition 65 warnings for Covered Products.

14 However, this provision does not prohibit AdvoCare from including information about the
15 Proposition 65 warning separately from the warning on its website (e.g., on a Frequently Asked
16 Questions page). In the warning, AdvoCare shall identify each Covered Product that is contained
17 in that shipment and shall not provide any "Blanket" warnings.

18 Regarding the insert warnings, AdvoCare shall provide one insert warning for each
19 Covered Product in a box or one insert warning that lists all of the Covered Products in the box.
20 The insert warning will be a minimum of 5 inches x 7 inches. For the receipt/order confirmation
21 warning, the receipt/order confirmation shall be present on the front of the receipt/order
22 confirmation when there is both a front and back. AdvoCare must display the above warnings
23 with such conspicuousness, as compared with other words, statements, or design of the insert or
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1 receipt/invoice, as applicable, to render the warning likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use of the product. The warnings
3 must be at least the same size as the largest of any other health or safety warnings appearing on the
4 insert or receipt/invoice, as applicable, of such product, and the word "WARNING" shall be in all
5 capital letters and in bold print.
6

7 3.2.1 Calculation of Lead Levels

8
9 If appropriate, AdvoCare may exclude the sum of the amount of lead contained in each
10 ingredient listed in Table 1 present in the maximum daily serving recommended by AdvoCare
11 in each Covered Product. If AdvoCare seeks to subtract out the amount of lead pursuant to this
12 Section, upon calculating lead content, AdvoCare shall provide ERC with the name of the
13 Covered Product that AdvoCare contends contains naturally-occurring lead, the exact
14 ingredient(s) listed below in Table 1 in the Covered Product, and the amount in the maximum
15 daily serving recommended by AdvoCare of each ingredient in Table 1 in grams. For each
16 Covered Product that AdvoCare contends contains naturally-occurring lead, AdvoCare shall
17 also provide a signed declaration attesting to the amount of each Table 1 ingredient in the
18 maximum daily serving recommended by AdvoCare.

19 AdvoCare may update this list from time to time. AdvoCare will be entitled to submit
20 this information to ERC confidentially. In the event that a dispute arises with respect to
21 compliance with the terms of this Consent Judgment as to any contribution from naturally
22 occurring lead levels under this Section, ERC and AdvoCare shall seek entry of a protective
23 order that governs access to and disclosure of the information provided confidentially by
24 AdvoCare to ERC in any litigation or proceeding, before any such information is disclosed by
25 ERC in connection with that litigation or proceeding.
26

27 Should ERC, or the California Attorney General, reach a settlement of a Proposition 65
28 claim that establishes allowances for naturally-occurring lead in ingredients other than those

1 specified in Table 1, then AdvoCare may seek to modify the Consent Judgment to include those
2 additional ingredients in Table 1, subject to the requirements set forth in this Section 3.2.1.
3

4 **TABLE 1**

5

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	0.8 mcg lead per gram of elemental calcium
Ferrous Fumarate	0.4 mcg lead per gram of ferrous fumarate
Zinc Oxide	8.0 mcg lead per gram of zinc oxide
Magnesium Oxide	0.4 mcg lead per gram of magnesium oxide
Potassium Chloride	1.1 mcg lead per gram of potassium chloride
Cocoa powder	1.0 mcg lead per gram of cocoa powder

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14 **3.3 Reformulated Covered Product**

15 A Reformulated Covered Product is one for which the maximum recommended daily
16 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the
17 quality control methodology described in Section 3.4. As used in this Consent Judgment, "no
18 more than 0.5 micrograms of lead per day" means that the samples of the testing performed by
19 AdvoCare under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead
20 (with daily exposure calculated pursuant to Section 3.4 of this Consent Judgment), after
21 excluding levels of lead pursuant to Section 3.2. For products that cause exposures in excess of
22 0.5 micrograms of lead per day, AdvoCare shall provide the warning set forth in Section 3.2.
23 For purposes of determining which warning, if any, is required pursuant to Section 3.2, for each
24 Covered Product, AdvoCare will pull three (3) random samples and test each of these three (3)
25 random samples once. The highest lead detection result of the three (3) randomly-selected
26 samples of the Covered Products will be controlling.
27

28 **3.4 Testing and Quality Control Methodology**

1 In the event that AdvoCare chooses to classify a Covered Product as a Reformulated
2 Product under Section 3.3 (as opposed to meeting the warning requirements set out in Section
3 3.2), the below testing requirements apply.

4 3.4.1 All testing shall be performed using a laboratory method that complies
5 with the performance and quality control factors appropriate for the method used including
6 limit of detection, limit of qualification, accuracy, and precision and meets the following
7 criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of
8 quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently
9 agreed upon in writing by the Parties.

10 3.4.2 All testing shall be performed by a laboratory certified by the California
11 Environmental Laboratory Accreditation Program for the analysis of heavy metals or a
12 laboratory that is approved by, accredited by, or registered with a federal agency, the National
13 Environmental Laboratory Accreditation Program or similar nationally-recognized accrediting
14 organization to perform analysis of heavy metals. AdvoCare may test the Covered Products if
15 AdvoCare is a qualified laboratory as described above. Nothing in this Consent Judgment shall
16 limit AdvoCare's ability to conduct, or require that others conduct, additional testing of the
17 Covered Products, including the raw materials used in their manufacture.

18 3.5 Private Label Customers of AdvoCare

19 If AdvoCare enters into an agreement in which a private label customer sells one or
20 more of the Covered Products, then AdvoCare shall provide notice of such agreement to ERC,
21 in writing, at least thirty (30) days before the private label customer makes the Covered Product
22 available to California consumers in stores or through a website. AdvoCare agrees that if
23 AdvoCare fails to provide such notice to ERC by the thirty-day deadline, then the private-
24 labeled product will cease to be considered a Covered Product under the terms of this Consent
25 Judgment.
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1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
3 penalties, attorney's fees and costs, AdvoCare shall make a total payment of \$197,768.50
4 within ten (10) business days of receiving the Notice of Entry of Judgment. Said payment shall
5 be for the following:

6 **4.2** \$32,692.00 shall be payable as civil penalties pursuant to California Health and
7 Safety Code section 25249.7(b)(1). Of this amount, \$24,519.00 shall be payable to the Office
8 of Environmental Health Hazard Assessment ("OEHHA") and \$8,173.00 shall be payable to
9 Environmental Research Center. California Health and Safety Code section 25249.12(c)(1) &
10 (d). AdvoCare shall send both civil penalty payments to ERC's counsel who shall be
11 responsible to forward the civil penalty.

12 **4.3** \$33,396.00 shall be payable to Environmental Research Center as
13 reimbursement to ERC for (A) reasonable costs associated with the enforcement of Proposition
14 65 and other costs incurred as a result of work in bringing this action; and (B) \$98,084.00 shall
15 be payable to Environmental Research Center in lieu of further civil penalties, for activities
16 such as: (1) continued enforcement of Proposition 65, which includes analyzing, researching
17 and testing consumer products that may contain Proposition 65 chemicals; (2) the continued
18 monitoring of past consent judgments and settlements to ensure companies are in compliance
19 with Proposition 65; and (3) giving a donation of \$4,985.00 to the Center for Environmental
20 Health to address reducing toxic chemical exposures in California.

21 **4.4** \$29,158.50 shall be payable to Michael Freund as reimbursement of ERC's
22 attorney's fees and \$4,438.00 shall be payable to Karen Evans as reimbursement of ERC's
23 attorney's fees.

24 **4.5** AdvoCare shall mail or deliver the payments in this Section to the Law Office of
25 Michael Freund. AdvoCare will be provided with taxpayer identification information to enable
26 AdvoCare to process the payments.
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1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 5.1 This Consent Judgment may be modified only by: (i) written agreement and
3 stipulation of the Parties; and (ii) upon entry of a modified Consent Judgment by the Court.

4 5.2 If either Party seeks to modify this Consent Judgment under Section 5.1, then
5 the Party requesting the modification shall provide written notice to the other Party of its intent
6 ("Notice of Intent"). If the Party receiving the Notice of Intent seeks to meet and confer
7 regarding the proposed modification, then that Party shall provide written notice to the other
8 Party within thirty (30) days of receiving the Notice of Intent. If such notice is provided in a
9 timely manner, then the Parties shall meet and confer in good faith as required in this Section.
10 The Parties shall meet in person or on the telephone within thirty (30) days of notification of
11 intent to meet and confer. Within thirty (30) days of such meeting, if the Party receiving the
12 Notice of Intent disputes the proposed modification, that Party shall provide the other Party a
13 written factual basis for its position. The Parties shall continue to meet and confer for an
14 additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may
15 agree in writing to different deadlines for the meet and confer period.
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17 5.3 In the event AdvoCare initiates or otherwise requests a modification under
18 Section 5.1, AdvoCare shall reimburse ERC its reasonable attorney's fees and costs for the time
19 spent in the meet and confer process and filing and arguing a joint motion or application in
20 support of a modification of the Consent Judgment as well as ERC's reasonable costs; provided
21 however, that the sum of all of these fees and costs shall not exceed \$3,500 total without the
22 prior written consent of AdvoCare.

23 5.4 Where the meet and confer process does not lead to a joint motion or application
24 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
25 on its own. In such a situation, the prevailing party may seek to recover costs and reasonable
26 attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party
27 who is successful in obtaining relief more favorable to it than the relief that the other party was
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1 amenable to providing in writing and with specificity during the Parties' good faith attempt to
2 resolve the dispute that is the subject of the modification.

3 5.5 If AdvoCare seeks to exclude naturally-occurring lead in its calculation of
4 overall lead content for any of the Covered Products, during the meet and confer process,
5 AdvoCare shall provide to ERC a complete list of all ingredients and corresponding
6 percentages of each ingredient with each product, and any other data that independently
7 supports AdvoCare's contention that the lead it seeks to exclude is naturally occurring.
8 AdvoCare is entitled to submit to ERC documentation pursuant to this Section which ERC will
9 keep confidential.

10 5.6 The "Termination Deadline" is the date that is three (3) years after the Effective
11 Date, or the following business day if the three-year date falls on a Saturday or Sunday.
12 AdvoCare may provide written notice (the "Termination Notice") to ERC, stating that it wants
13 the terms of this Consent Judgment to expire, as long as the Termination Notice is received by
14 ERC during the fourteen (14) calendar days leading up to and including the Termination
15 Deadline (the "14-Day Period"). ERC agrees to stipulate and/or consent to a joint motion to
16 modify this Consent Judgment requesting the Court to terminate this Consent Judgment, but
17 only if ERC receives the Termination Notice during the 14-Day Period.

18 5.7 The Parties agree that AdvoCare shall pay ERC its reasonable attorneys' fees
19 and costs incurred for a modification of this Consent Judgment governed by Section 5.6.
20 Should AdvoCare provide ERC with the Termination Notice under Section 5.6, then, upon
21 AdvoCare's request(s), ERC shall provide to AdvoCare ERC's current attorneys' fees and costs
22 within two (2) business days of receiving AdvoCare's request for fees and costs. AdvoCare
23 may request such fees and costs under this Section via e-mail or mail to ERC and its attorneys
24 using the addresses in Section 11.
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1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
4 this Consent Judgment.

5 **6.2** Only after it complies with Section 14 below, any Party may, by motion or
6 application for an order to show cause filed with this Court, enforce the terms and conditions
7 contained in this Consent Judgment.

8 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
9 Covered Product (and for which ERC alleges that no warning has been provided), then ERC
10 shall inform AdvoCare in a reasonably prompt manner of its test results, including information
11 sufficient to permit AdvoCare to identify the Covered Products at issue. AdvoCare shall,
12 within thirty (30) days following AdvoCare's receipt of such notice, provide ERC with testing
13 information demonstrating AdvoCare's compliance with the Consent Judgment, if warranted.
14 The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action
15 pursuant to Section 14.

16 **7. APPLICATION OF CONSENT JUDGMENT**

17 This Consent Judgment may apply to, be binding upon and benefit the Parties, and their
18 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
19 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers,
20 predecessors, successors and assigns and ERC on its own behalf and in the public interest as set
21 forth in Section 8. This Consent Judgment shall have no application to Covered Products
22 which are exclusively distributed and/or sold outside the State of California. With respect to
23 Covered Products that are distributed and/or sold both inside and outside of California, the
24 requirements contained in this Consent Judgment apply to the Covered Products only to the extent
25 that the distribution and/or sales occur in California. This Consent Judgment shall terminate
26 without further action by any Party when AdvoCare no longer manufactures, distributes or sells
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1 all of the Covered Products and all of such Covered Products previously "distributed for sale in
2 California" have reached their expiration dates and are no longer sold.

3 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

4 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
5 behalf of itself, and in the public interest, and AdvoCare, of any alleged violation of
6 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
7 exposure to lead from the handling, use or consumption of the Covered Products and fully and
8 finally resolves all claims that have been or could have been asserted in this action up to and
9 including the date of entry of Judgment for failure to provide Proposition 65 warnings for the
10 Covered Products. ERC, on behalf of itself, and in the public interest, hereby discharges
11 AdvoCare and each of their respective officers, directors, shareholders, employees, agents,
12 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers,
13 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
14 distribution chain down of any Covered Product, and the predecessors, successors and assigns
15 of any of them (collectively, "Released Parties"), from any and all claims, actions, causes of
16 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that
17 could have been asserted, as to any alleged violation of Proposition 65 arising from or related
18 to the failure to provide Proposition 65 warnings on the Covered Products regarding lead.

19 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
20 Parties from any and all known and unknown claims for alleged violations of Proposition 65, or
21 for any other statutory or common law claims, arising from or relating to alleged exposures to
22 lead and lead compounds in the Covered Products as set forth in the Notices. It is possible that
23 other claims not known to the Parties arising out of the facts alleged in the Notices of Violation
24 or the Complaint and relating to the Covered Products will develop or be discovered. ERC, on
25 behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover
26 and include all such claims, including all rights of action therefor. ERC has full knowledge of
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1 the contents of California Civil Code section 1542. ERC, on behalf of itself only,
2 acknowledges that the claims released in Section 8.1 and 8.2 above may include unknown
3 claims, and nevertheless waives California Civil Code section 1542 as to any such unknown
4 claims. California Civil Code section 1542 reads as follows:
5

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
9 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
10 OR HER SETTLEMENT WITH THE DEBTOR.

11 ERC, on behalf of itself only, acknowledges and understands the significance and
12 consequences of this specific waiver of California Civil Code section 1542.

13 8.3 Compliance with the terms of this Consent Judgment shall be deemed to
14 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
15 to lead in the Covered Products.

16 8.4 ERC, on one hand, and AdvoCare, on the other hand, release and waive all
17 claims they may have against each other for any statements or actions made or undertaken by
18 them in connection with the Notices of Violation or the Complaint; provided however, that
19 nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this
20 Consent Judgment.

21 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

24 **10. GOVERNING LAW**

25 The terms and conditions of this Consent Judgment shall be governed by and construed in
26 accordance with the laws of the State of California.
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1 **11. PROVISION OF NOTICE**

2 All notices required to be given to either Party to this Consent Judgment by the other shall be in
3 writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail;
4 (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.
5

6 **FOR ENVIRONMENTAL RESEARCH CENTER:**

7 Chris Heptinstall, Executive Director
8 Environmental Research Center
9 3111 Camino del Rio North, Suite 400
10 San Diego, CA 92108
11 Email: erc501c3@yahoo.com

12 Michael Bruce Freund
13 Law Offices of Michael Freund
14 1919 Addison Street, Suite 105
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16 Telephone: (510) 540-1992
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18 Email: freund1@aol.com

19 Karen Evans
20 Coordinating Counsel
21 Environmental Research Center
22 4218 Biona Place
23 San Diego, CA 92116
24 Telephone: (619) 640-8100

25 **FOR ADVOCARE INTERNATIONAL, L.P.**

26 Allison Levy, Esq.
27 Vice President and Chief Legal Officer
28 AdvoCare International, LP
29 2801 Summit Avenue
30 Plano, TX 75074
31 Telephone: (972) 665-5895
32 Facsimile: (972) 665-5223

33 With a copy to:

34 Daniel Chammas, Esq.
35 Venable LLP

1 2049 Century Park East, Suite 2100
2 Los Angeles, CA 90067
3 Telephone: (310) 229-0302
4 Facsimile: (310) 229-9901

4 **12. COURT APPROVAL**

5 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
6 void and have no force or effect.

7 **12.2** ERC shall comply with California Health and Safety Code Section 25249.7(f)
8 and with Title II of the California Code Regulations, Section 3003.

9 **13. EXECUTION AND COUNTERPARTS**

10 This Consent Judgment may be executed in counterparts, which taken together shall be deemed to
11 constitute one document. A facsimile or pdf signature shall be construed as valid as the original
12 signature.

13 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

14 If a dispute arises with respect to either Party's compliance with the terms of this Consent
15 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
16 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
17 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
18 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
19 used in the preceding sentence, the term "prevailing party" means a party who is successful in
20 obtaining relief more favorable to it than the relief that the other party was amenable to providing
21 in writing and with specificity during the Parties' good faith attempt to resolve the dispute that is
22 the subject of such enforcement action.

23 **15. ENTIRE AGREEMENT, AUTHORIZATION**

24 **15.1** This Consent Judgment contains the sole and entire agreement and
25 understanding of the Parties with respect to the entire subject matter hereof, and any and all
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1 prior discussions, negotiations, commitments and understandings related hereto. No
2 representations, oral or otherwise, express or implied, other than those contained herein have
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
4 herein, shall be deemed to exist or to bind any Party.

5 15.2 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
7 explicitly provided herein, each Party shall bear its own fees and costs.

8 **16. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
9 **CONSENT JUDGMENT**

10 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
11 request the Court to fully review this Consent Judgment and, being fully informed regarding the
12 matters which are the subject of this action, to:

- 13 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
14 settlement of all matters raised by the allegations of the Complaint, that the matter has been
15 diligently prosecuted, and that the public interest is served by such settlement; and
16 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
17 approve the Settlement and approve this Consent Judgment.

18 **IT IS SO STIPULATED:**

19 Dated: October 18, 2013

20 ENVIRONMENTAL RESEARCH CENTER

21 By: 
22 Chris Heptinstall, Executive Director

1 Dated: October 28, 2013

ADVOCARE INTERNATIONAL, L.P.

By: [Signature]
Allison Levy
Vice President and Chief Legal Officer

5 APPROVED AS TO FORM:

7 Dated: October 28, 2013

LAW OFFICE OF MICHAEL FREUND

By: [Signature]
Michael Freund
Attorney for Plaintiff
Environmental Research Center

12 Dated: October 28, 2013

VENABLE LLP

By: [Signature]
Daniel Chammas
Attorney for Defendant
AdvoCare International, L.P.

JUDGMENT

18 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved
19 and Judgment is hereby entered according to its terms.

22 Dated: 2/28 / 2014
2013

[Signature]
Gail B. Bereola
Judge of the Superior Court

GAIL B. BEREOLA

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

TEL 510/540-1892
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

April 16, 2010

Re: Notice of Violation Against Advocare International, LP for Violation of California Health & Safety Code-Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Advocare International, LP.

This letter constitutes notification that Advocare International, LP, located at 2727 Realty Road, Suite 134, Carrollton, Texas 75006 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 lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Advocare International, LP is exposing people to lead from the following Advocare products: OmegaPlex; ThermoPlus; and ProBiotic Restore Ultra.

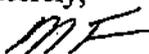
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Advocare International LP is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, 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, ERC 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 ERC from information now available. ERC may continue to investigate other products 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,

Handwritten signature of Michael Freund in black ink, consisting of stylized initials 'MF'.

Michael Freund

cc: Chris Heptinstall, ERC
Karen Evans, ERC

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the 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 Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead from products that it manufactures and distributes. 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 laboratory that conducted the testing to determine the concentration of lead in the products identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for lead. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through oral exposure (ingestion).
4. Based on my consultation with the laboratory, the results of the laboratory testing, as well as published studies on lead, 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: April 16, 2010

MF

Michael Freund
Attorney for Environmental Research Center

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 April 19, 2010 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 April 19, 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 98721

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., Site 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 345
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 617
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
~~14500 15th Avenue~~ 100 Stanchouse Court
~~Alturas, CA 95885~~ 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

District Attorney of San Mateo
County
400 County Ctr, 3rd 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 986
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 11th 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

Todd Cash
Advocare International, LP
2727 Realty Road, Suite 134
Carrollton, TX 75006

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

TEL 510/540-1992
FAX 510/540-3543
EMAIL FREUND1@AOL.COM

May 28, 2010

Re: Notice of Violation Against Advocare International, LP for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Advocare International, LP.

This letter constitutes notification that Advocare International, LP, located at 2727 Realty Road, Suite 134, Carrollton, Texas 75006 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 lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Advocare International, LP is exposing people to lead from the following products: Advocare Amplify A.T.; Advocare Nighttime Recovery; Advocare Muscle Strength; Advocare Actotherm Sr.; Advocare Fiber Drink; Advocare Probiotic Restore; Advocare Joint Promotion; Advocare Thermoplus; Advocare Herbal Cleanse; Advocare Omegaplex; and Advocare Bio Therm.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Advocare International LP is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, 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, ERC 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 ERC from information now available. ERC may continue to investigate other products 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.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Advocare International, LP unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

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

Sincerely,



Michael Freund

cc: Chris Heptinstall, ERC
Karen Evans, ERC

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the 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 Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead from products that it manufactures and distributes. 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 laboratory that conducted the testing to determine the concentration of lead in the products identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for lead. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through oral exposure (ingestion).
4. Based on my consultation with the laboratory, the results of the laboratory testing, as well as published studies on lead, 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: May 25, 2010



Michael Freund
Attorney for Environmental Research Center

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 May 28, 2010 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 May 28, 2010 at Berkeley, California.



Michael Freund

District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney of Glenn County
PO Box 430
Willows, CA 95988

District Attorney of Marin County
3501 Civic Center Dr., Room 130
San Rafael, CA 94903

District Attorney of Colusa County
547 Market Street
Colusa, CA 95932

District Attorney of Kings County
1400 West Lacey
Hanford, CA 93239

District Attorney of Mono County
PO Box 617
Bridgeport, CA 93517

District Attorney of Contra Costa
County
327 Ferry Street
Martinez, CA 94553

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Mariposa County
PO Box 730
Mariposa, CA 95338

District Attorney of Alpine County
PO Box 248
Markleeville, CA 96120

District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney of Monterey County
230 Church Street, Bdg. 2
Salinas, CA 93901

District Attorney of Del Norte County
450 H Street, Ste 171
Crescent City, CA 95531

District Attorney of Imperial County
939 Main Street
El Centro, CA 92243

District Attorney of Mendocino County
PO Box 1000
Ukiah, CA 95482

District Attorney of Amador County
708 Court Street, # 202
Jackson, CA 95642

District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130

District Attorney of Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney of Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney of Inyo County
PO Drawer D
Independence, CA 93526

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

District Attorney of El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012

District Attorney of Nevada County
110 Union Street
Nevada City, CA 95959-2503

District Attorney of Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney of Madera County
209 West Yosemite Ave.
Madera, CA 93637

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

District Attorney of Fresno County
2220 Tulare Street, # 1000
Fresno, CA 93721

District Attorney of Kern County
1215 Truxtun Ave.
Bakersfield, CA 93301

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

District Attorney of Placer County
2501 North Lake Blvd.
Tahoe City, CA 96145

District Attorney of San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

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

District Attorney of San Bernardino Cty
316 N. Mountain View Ave.
San Bernardino, CA 92415

District Attorney of Sierra County
Courthouse, PO Box 457
Donieville, CA 95936

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

District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95971

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

District Attorney of Tehama County
PO Box 519
Red Bluff, CA 96080

District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, 92101

District Attorney of Siskiyou County
PO Box 986
Yreka, CA 96097

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

District Attorney of Riverside County
4075 Main Street
Riverside, CA 92501

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

District Attorney of Trinity County
PO Box 310
11 Court Street
Weaverville, CA 96093

District Attorney of San Francisco
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850 Bryant Street, Room 325
San Francisco, CA 94103

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

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

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

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

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

District Attorney of San Joaquin County
PO Box 990
Stockton, CA 95201

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

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

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

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

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

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

District Attorney of Stanislaus County
800 11th Street, Room 200
PO Box 442
Modesto, CA 95353

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 Ave. # 1620
San Diego, CA 92101

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

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
PO Box 70550
Oakland, CA 94612

Karen A. Evans, General Counsel
Environmental Research Center
Law Office of Karen A. Evans
4218 Biona Place
San Diego, CA 92116

Todd Cash
Advocare International, LP
2727 Realty Road, Suite 134
Carrollton, TX 75006



Environmental Research Center

5694 Mission Center Road #199
San Diego, CA 92108
619.309.4194

September 24, 2010

VIA CERTIFIED MAIL

Todd Cash, Partner
Advocare International, LP
2727 Realty Road, Suite 134
Carrollton, TX 75006

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this Notice that violated Proposition 65 is:

Advocare International, LP

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

Advocare Carb Ease Herbal Dietary Supplement - Lead
Advocare Formula W - Lead
Advocare Immuno Guard - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead as chemical known to cause cancer.

This letter is a Notice to Advocare International, LP and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Advocare International, LP currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Advocare International, LP has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Advocare International, LP has violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Advocare International, LP agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

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

September 24, 2010

Page 3

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Advocare International, LP only)

Additional Supporting Information for Certificate of Merit (to AG only)

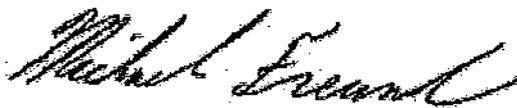
CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Advocare International, LP

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 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 have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on 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 plaintiff's 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & 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: September 24, 2010



Michael Freund
Attorney for Environmental Research Center

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 of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On September 24, 2010, I served the following documents:

**NOTICE OF VIOLATIONS 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 parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Todd Cash
Advocare International, LP
2727 Realty Road, Suite 134
Carrollton, TX 75006

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 24, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
939 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

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

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 24, 2010

Page 7

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

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

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

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

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

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

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

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

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

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

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

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

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

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

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

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

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

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



Environmental Research Center

5694 Mission Center Road #199
San Diego, CA 92108
619.309.4194

January 14, 2011

VIA CERTIFIED MAIL

Todd Cash, Partner
Advocare International, LP
2727 Realty Road, Suite 134
Carrollton, TX 75006

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this Notice that violated Proposition 65 is:

Advocare International, LP

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

Advocare International LP, Meal Replacement Shake, Chocolate 59g - Lead
Advocare International LP, Performance Elite, Post-Workout Recovery, Chocolate 60g - Lead
Advocare International LP, Performance Elite, Muscle Gain, Chocolate 41.5 g - Lead
Advocare International LP, Seasonal Support, 120 Capsules - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead as chemical known to cause cancer.

This letter is a Notice to Advocare International, LP and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Advocare International, LP currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Advocare International, LP has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Advocare International, LP has violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Advocare International, LP agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

cc: Karen Evans

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Advocare International, LP only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Advocare International, LP

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Dated: January 14, 2011

Michael Freund
Attorney for Environmental Research Center