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Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

Mesrop Khoudagoulian
Khoudagoulian & Foster
130 North Brand Boulevard, Suite 202
Glendale, CA 91203
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Attorneys for Defendants
MEDICAL RESEARCH INSTITUTE and
VMI NUTRITION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,

Plaintiff,

v.

VMI NUTRITION, INC. and MEDICAL
RESEARCH INSTITUTE

Defendants.

CASE NO. CIV1202584

~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT; ~~[PROPOSED]~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: June 5, 2012

TRIAL DATE: Not Set

FILED

NOV 06 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

1. INTRODUCTION

1.1 On June 5, 2012, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing its Complaint for injunctive and declaratory relief and civil penalties pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"), against VMI Nutrition,

Inc. ("VMI") and Medical Research Institute ("MRI") ("Defendants"). ERC claims that products manufactured and distributed by Defendants, namely, MRI No2 Ripcuts Cellular Fat Burn-Grape, Medical Research Institute War Berry Attack, and MRI Black Powder Blue Raspberry (the "Covered Products") contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and exposes consumers at a level requiring a Proposition 65 warning. ERC and Defendants shall sometimes be referred to individually as a "Party" or collectively as the "Parties."

1.2 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. ERC has diligently prosecuted this matter and is settling this case in the public interest.

1.3 VMI is a privately owned contract manufacturer that specializes in the formulation, blending, packaging, and testing of nutritional consumer goods. MRI is a company that develops and markets nutraceuticals and is a subsidiary of Natrol, Inc. VMI manufactures and MRI distributes the Covered Products to the public. Defendants are business entities that employ ten or more persons.

1.4 The Complaint is based on allegations contained in Notices of Violation against VMI dated November 5, 2010 and January 14, 2011, and a Notice of Violation against MRI dated July 9, 2010 served on the California Attorney General, other public enforcers and Defendants. A true and correct copy of these Notices of Violation is attached hereto as Exhibit A. More than 60-days have passed since these Notices of Violation were mailed and no public enforcement entity has filed a complaint against Defendants with regard to the Covered Products or the

violations. On September 24, 2010, ERC withdrew the product named No2 Charger Chocolate Blast from the July 9, 2010 Notice of Violation against MRI.

1.5 ERC's Notices of Violation and the Complaint in this action allege that the Covered Products expose persons in California to lead without first providing clear and reasonable warnings, in violation of Cal. Health & Safety Code Section 25249.6. Defendants deny all material allegations of the Notices of Violation and the Complaint and specifically deny that the Covered Products require a Proposition 65 warning.

1.6 The Parties have entered into this Consent Judgment in order to settle, compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum, except with respect to an action seeking to enforce the terms of this Consent Judgment.

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

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

1.9 Subsequent to ERC's Notices of Violation, Defendants stopped selling MRI Black Powder Blue Raspberry in California.

2. JURISDICTION AND VENUE

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

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING

3.1 On or after the Effective Date, Defendants shall be permanently enjoined from manufacturing for sale in California, distributing into California, or directly selling to a consumer in California any Covered Product for which the maximum daily dose recommended on the label contains more than 0.5 micrograms of lead using the following formula for calculating the exposure level: $\mu\text{g/day (ppm) of lead} \times \text{g/serving (using the serving appearing on the current product label)} \times \text{servings/day (using the largest number of servings currently appearing on the product label)} = \mu\text{g/day lead exposure}$. ("the Agreed Formula") unless such Covered Product complies with the warning requirement set forth in Section 3.4.

3.2 **Clear and Reasonable Warnings.** For those Covered Products that are subject to the warning requirement of Section 3.1, Defendants shall provide the following warning as specified below:

WARNING: California Residents Only: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

The term "cancer" shall be used in the warning only if the maximum dose recommended on the label contains more than 15 micrograms of lead while using the testing protocol set forth in Section 3.5.

3.3 The warning shall be prominently affixed to or printed upon the product's label of any the Covered Products so as to be clearly conspicuous, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product. If the warning is displayed on the product's label, the warning shall be at least the same size as the largest of any other health or safety warnings on the product and the word "warning" shall be in all capital letters and in bold print.

3.4 **Further Labeling.** Defendants shall modify the label on Covered Products MRI No2 Ripcuts Cellular Fat Burn-Grape and Medical Research Institute War Berry Attack so that the number of servings per day for each product is one. This language shall be printed on the label in a conspicuous manner as set forth in Section 3.3.

3.5 **Testing.** Defendants shall continue to test the Covered Products for lead content to ensure lead levels are below 0.5 micrograms per day. Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity reagents that is consistent with the procedure set forth in Exhibit B or any substantively similar other testing method subsequently agreed upon in writing by the Parties. Defendants shall continue to arrange for lead testing, at a minimum, once a year, on or before the anniversary of the entry of the Consent Judgment, of at least five (5) randomly selected samples of each Covered Product. The testing shall continue so long as the Covered Products are sold in California or sold to a third party for retail sale in California. All testing pursuant to this Consent Judgment shall be performed by a laboratory

certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. Defendants may test the product themselves if they are a qualified laboratory as described above and utilize the testing procedure and methodology set forth in this Section. The laboratory shall follow this testing methodology and the Agreed Formula. The method of selecting samples for testing must comply with the regulations of the Food and Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80 (c). Nothing in this Consent Judgment shall limit Defendants' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.6 Defendants shall retain all test results and documentation for a period of four years from the date of the test and shall provide copies to ERC upon written request within 10 days of receipt of this request.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees and costs, Defendants shall make a total payment of \$75,000.00 within ten (10) business days of receiving the Notice of Entry of Judgment. Said payment shall be for the following:

4.2 \$6,500.00 shall be payable as civil penalties pursuant to Health & Safety Code Section 25249.7 (b) (1). Of this amount, \$4,875.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA") and \$1,625.00 shall be payable to Environmental Research Center. Cal. Health & Safety Code Section 25249.12 (c) (1) & (d). Defendants shall send both civil penalty payments to ERC's counsel who shall be responsible to

forward the civil penalty payment to OEHHA along with a copy of the transmittal to counsel for Defendants.

4.3 \$24,116.00 payable to Environmental Research Center as reimbursement to ERC for (A) reasonable investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this action and (B) \$19,884.00 payable to Environmental Research Center in lieu of further civil penalties, for activities such as: (1) investigating, researching and testing consumer products that may contain Proposition 65 chemicals; (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) awarding grants to California non-profit foundations/entities dedicated to public health as set forth in the Addendum and taking into account: (a) the nexus between the alleged harm in the underlying cases(s) and the grant program work; (b) the potential for toxics reduction, prevention, remediation or education benefits to California residents from the proposal; (c) and ERC's assessment of the grantee's chances for success in its program work.

4.4 \$19,500.00 payable to Michael Freund as reimbursement of ERC's attorney's fees and \$5,000.00 payable to Karen Evans as reimbursement ERC's attorney's fees.

4.5 Defendants' payments shall be mailed to the Law Office of Michael Freund.

5. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only by written agreement and stipulation of the Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent judgment by the Court.

6. RETENTION OF JURISDICTION, ENFORCMENT OF CONSENT JUDGMENT

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

6.2 Any Party may, by motion or application for an order to show cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing party may request that the Court award its reasonable attorney's fees and costs associated with such motion or application.

6.3 In any action brought by ERC or another enforcer alleging subsequent violations of Proposition 65 regarding the Covered Products, so long as Defendants are in compliance with Section 3 of this Consent Judgment, Defendants may assert any and all defenses that are available, including the res judicata or collateral estoppel effect of this Consent Judgment. Furthermore, the rights of Defendants to defend themselves and its actions in law or equity shall not be abrogated or reduced in any fashion by any terms of this Consent Judgment, and Settling Defendants shall be entitled to raise any and all applicable defenses and/or counterclaims, arising in law or equity against the Plaintiffs.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment may apply to, be binding upon and benefit the Parties, and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, distributors, wholesalers, retailers, and all predecessors, successors and assigns of any of them.

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself, and in the public interest, and Defendants, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to

lead from the handling, use or consumption of the Covered Products. ERC, on behalf of itself, and in the public interest, hereby discharges Defendants and each of its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, distributors, wholesalers, retailers, and all other entities in the distribution chain down to the consumer of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and all claims asserted, or that could have been asserted, in this action arising from or related to the alleged failure to provide Proposition 65 warnings for the Covered Products regarding lead.

8.2 ERC, on behalf of itself only, hereby releases and discharges the Released Parties from any and all known and unknown past, present, and future rights, claims, causes of action, suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs, and expenses arising from or related to the claims asserted, or that could have been asserted, under state or federal law, regarding the presence of lead in the Covered Products or the facts alleged in the Notices of Violation or the Complaint, including without limitation any and all claims concerning the failure to provide clear and reasonable warnings of exposure to lead from the handling, use or consumption of the Covered Products or any other claim based on the facts or conduct alleged in the Complaint as to such products.

8.3 It is the intention of the Parties to this release that, upon entry of this Consent Judgment by the court, this Consent Judgment shall be effective as a full and final accord and satisfaction and release of every released claim up to and including the date of entry of the Consent Judgment.

8.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not now known to the Parties arising out of the facts alleged in the Notices of Violation or the

Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all such injuries, damages, liability, and claims, including all rights of action therefor. ERC has full knowledge of the contents of Cal. Civil Code Section 1542. ERC, on behalf of itself only, acknowledges that the claims released in Section 8.1 and 8.2 above may include unknown claims, and nevertheless waives Cal. Civil Code Section 1542 as to any such unknown claims. Cal. Civil Code Section 1542 reads as follows:

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

ERC, on behalf of itself only, acknowledges and understands the significance and consequences of this specific waiver of Cal. Civil Code Section 1542.

8.5 ERC, on one hand, and Defendants, on the other hand, release and waive all claims they may have against each other for any statements of actions made or undertaken by them in connection with the Notices of Violation or this action.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the state of California.

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be sent to the following agents:

FOR ENVIRONMENTAL RESEARCH CENTER:

Chris Heptinstall, Executive Director
Environmental Research Center
3111 Camino del Rio North, Suite 400
San Diego, CA 92108

Michael Bruce Freund
Law Offices of Michael Freund
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

Karen Evans
Coordinating Counsel
Environmental Research Center
4218 Biona Place
San Diego, CA 92116
Telephone: (619) 640-8100

FOR VMI NUTRITION, INC. AND MEDICAL RESEARCH INSTITUTE

Mesrop Khoudagoulian
Khoudagoulian & Foster
130 North Brand Boulevard, Suite 202
Glendale, CA 91203
Telephone: (818) 507-6666
Facsimile: (818) 507-6667

Bruce Remund
VMI Nutrition, Inc.
391 S. Orange Street
Salt Lake City, UT 84104

12. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against any Party.

13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

14. ENTIRE AGREEMENT, AUTHORIZATION

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

hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

14.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment.

15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

15.1 This Settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Settlement and, being fully informed regarding the matters which are the subject of this action, to:

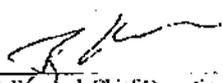
(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25239.7 (f) (4), approve the Settlement and approve this Consent Judgment.

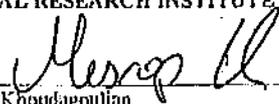
IT IS SO STIPULATED:

VMI NUTRITION, INC.

Dated: 8/27, 2012

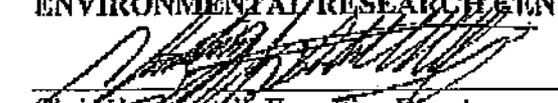

Bruce Beaudin, Chief Operating Officer

Dated: 8/27, 2012

MEDICAL RESEARCH INSTITUTE

Mesrop Khoudagoulian

ENVIRONMENTAL RESEARCH CENTER

Dated: 8/28/, 2012


Chris Hopsifasull, Executive Director

APPROVED AS TO FORM:

KHOUDAGOULIAN AND FOSTER

Dated: _____, 2012

Mesrop Khoudagoulian

Dated: _____, 2012

LAW OFFICE OF MICHAEL FREUND

Michael Freund
Attorney for Environmental Research Center

ORDER AND JUDGMENT

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

Dated: _____, 2012

Judge, Superior Court of the State
of California

ENVIRONMENTAL RESEARCH CENTER

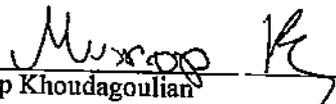
Dated: _____, 2012

Chris Hepstinstall, Executive Director

APPROVED AS TO FORM:

KHOUDAGOULIAN AND FOSTER

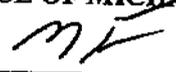
Dated: 9-4, 2012



Mesrop Khoudagoulian

Dated: 9-6, 2012

LAW OFFICE OF MICHAEL FREUND



Michael Freund
Attorney for Environmental Research Center

ORDER AND JUDGMENT

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

NOV 06 2012

Dated: _____, 2012

LYNN DURYEE

Judge, Superior Court of the State
of California

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

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

July 9, 2010.

Re: Notice of Violation Against Medical Research Institute 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 contained in the named products manufactured and distributed by Medical Research Institute.

This letter constitutes notification that Medical Research Institute located at 21411 Prairie Street, Chatsworth, CA 91311 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.

Medical Research Institute is exposing people to lead from the following products: MRI NO2-Charger - Chocolate Blast and MRI NO2 Ripcuts Cellular Fat Burn-Grape.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Medical Research Institute 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).

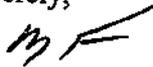
Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that

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 Medical Research Institute 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,



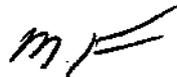
Michael Freund

cc: Chris Heptinstall, ERC
Karen Evans, ERC

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: July 8, 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 July 9, 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 July 9, 2009 at Berkeley, California.

MF

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
Droville, 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
91 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
220 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
County
950 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
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701 Ocean Street, Room 200
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Visalia, CA 93291

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

District attorney of San Luis Obispo
County
050 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
19 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

Edward Byrd, President
Medical Research Institute
21411 Prairie Street
Chatsworth, CA 91311



Environmental Research Center

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

November 5, 2010

VIA CERTIFIED MAIL

Current President or CEO
VMI Nutrition, Inc.
391 S. Orange Street
Salt Lake City, UT 84104

Jeff Reynolds
(VMI Nutrition, Inc.'s Registered Agent
For Service of Process)
391 S. Orange Street
Salt Lake City, UT 84104

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

VIA PRIORITY MAIL

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

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:

VMI Nutrition, Inc.

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

November 5, 2010

Page 3

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to VMI Nutrition, Inc. and its Registered Agent for Service of Process 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 VMI Nutrition, Inc.

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: November 5, 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 November 5, 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:

Current President or CEO
VMI Nutrition, Inc.
391 S. Orange Street
Salt Lake City, UT 84104

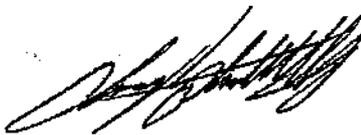
Jeff Reynolds
(VMI Nutrition, Inc.'s Registered Agent
For Service of Process)
391 S. Orange Street
Salt Lake City, UT 84104

On November 5, 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 November 5, 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 November 5, 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
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Willows, CA 95988

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

District Attorney, Imperial County
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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.*

November 5, 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

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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

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San Diego, CA 92101

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District Attorney, San Joaquin County
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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 Cir., 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
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Downieville, CA 95936

District Attorney, Siskiyou County
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Ventura, CA 93009

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Woodland, CA 95695

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215 Fifth Street
Marysville, CA 95901

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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

Current President or CEO
VMI Nutrition, Inc.
391 S. Orange Street
Salt Lake City, UT 84104

Jeff Reynolds
(VMI Nutrition, Inc.'s Registered Agent
for Service of Process)
391 S. Orange Street
Salt Lake City, UT 84104

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

VIA PRIORITY MAIL

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

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:

VMI Nutrition, Inc.

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

MRI Black Powder Blue Raspberry 15g - 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 VMI Nutrition, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving VMI Nutrition, Inc. 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.

VMI Nutrition, Inc. 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. VMI Nutrition, Inc. 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 VMI Nutrition, Inc. 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 VMI Nutrition, Inc. and its Registered Agent for Service of Process 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 VMI Nutrition, Inc.

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: January 14, 2011



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 January 14, 2011, 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:

Current President or CEO
VMI Nutrition, Inc.
391 S. Orange Street
Salt Lake City, UT 84104

Jeff Reynolds
(VMI Nutrition, Inc.'s Registered Agent
for Service of Process)
391 S. Orange Street
Salt Lake City, UT 84104

On January 14, 2011, 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)**

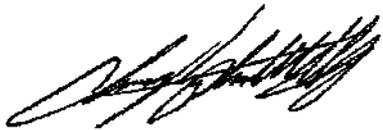
on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

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

On January 14, 2011, 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 January 14, 2011, 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
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Martinez, CA 94553

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Madera, CA 93637

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San Rafael, CA 94903

District Attorney, Mariposa County
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Mariposa, CA 95338

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

District Attorney, Merced County
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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.*
January 14, 2011

Page 6

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

District Attorney, San Benito County
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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
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Redwood City, CA 94063

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Santa Barbara, CA 93101

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