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10 Attorneys for Defendant
Sportron International, Inc.
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

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

17 Plaintiff,

18 v.

19 SPORTRON INTERNATIONAL, INC.,
20 and DOES 1-100, inclusive,

21 Defendants.
22

Case No. CGC-10-505926

~~[PROPOSED]~~ CONSENT JUDGMENT

23 **1. INTRODUCTION**

24 1.1 On December 8, 2010, Plaintiff Environmental Research Center (“ERC”), a non-
25 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
26 Complaint for Injunctive Relief and Civil Penalties (“Complaint”) pursuant to the provisions of
27 California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
28

ENDORSED
FILED
San Francisco County Superior Court

AUG - 1 2013

CLERK OF THE COURT
BY: CYNTHIA S. HERBERT
Deputy Clerk

1 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as “Proposition 65”),
2 against Defendant Sportron International, Inc. (“Sportron”). ERC and Sportron are hereinafter
3 sometimes referred to individually as a “Party” or collectively as the “Parties”.

4 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
5 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
6 and toxic chemicals, facilitating a safe environment for consumers and employees, and
7 encouraging corporate responsibility.

8 1.3 Sportron is a Texas corporation. The issue of the number of employees of
9 Sportron being in dispute between the Parties, the Parties agree in order to settle this action that
10 Sportron is deemed to employ ten or more persons and is a “person in the course of doing
11 business” within the meaning of Proposition 65 for the purposes of this Consent Judgment only
12 and for no other purposes, including, but not limited to any other legal matter.

13 1.4 On August 17, 2010, pursuant to California Health and Safety Code
14 § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”)
15 on the California Attorney General, other public enforcers, and Sportron. A true and correct
16 copy of the Notice of Violations is attached hereto as Exhibit A. The Notice of Violations
17 contains allegations that Sportron has exposed and continues to expose consumers in California
18 to lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, by
19 manufacturing, marketing, distributing and/or selling the following six products:

- 20 1) Sportron International FoodMatrix UltraGuard Forte,
- 21 2) Sportron International Gentron,
- 22 3) Sportron International Cleanse Senna Herbal Supplement Blend,
- 23 4) Sportron International FoodMatrix Weight Management Formula Turbo Zing!
- 24 5) Sportron International Respiron, and
- 25 6) Sportron International FoodMatrix G12 Vegetable & Greens Drink Mix.

26 These six products are hereinafter referred to collectively as the “Covered Products.” Neither the
27 California Attorney General nor any other public enforcer has filed suit against Sportron with
28 regard to the Covered Products or the alleged violations.

1 1.5 More than 60 days after service of the Notice of Violations, ERC filed the
2 Complaint, which is based on the Notice of Violations and contains allegations that Sportron has
3 exposed and continues to expose persons in California who use and/or handle the Covered
4 Products to the chemical lead in excess of the exposure levels allowed under Proposition 65
5 without first providing clear and reasonable warnings, in violation of California Health and
6 Safety Code § 25249.6. Sportron denies all material allegations contained in the Notice of
7 Violations and the Complaint, assert numerous affirmative defenses to the allegations of
8 violations, and specifically denies that the Covered Products require Proposition 65 warnings or
9 otherwise harm any person.

10 1.6 The Parties enter into this Consent Judgment in order to settle disputed claims
11 between them and to avoid prolonged and costly litigation.

12 1.7 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
13 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or
14 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
15 construed as giving rise to any presumption or inference of admission or concession or waiver of
16 a defense by Sportron as to any fault, wrongdoing or liability whatsoever, including, but not
17 limited to, any alleged violation of Proposition 65.

18 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall
19 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or
20 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,
21 responsibilities, and duties of any Party to this Consent Judgment.

22 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent
23 Judgment is entered by the Court.

24 1.10 The only products covered by this Consent Judgment are the Covered Products,
25 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
26 Covered Products only.

27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment only, the Parties stipulate that this Court has

1 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that
2 venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment
3 pursuant to the terms set forth herein.

4 **3. INJUNCTIVE RELIEF**

5 **3.1 Generally**

6 On and after the Effective Date, Sportron shall be permanently enjoined and restrained
7 from manufacturing for sale in California, Distributing into California, or directly selling to any
8 consumer located in California any of the Covered Products that have a daily lead exposure rate
9 (“Daily Lead Exposure Rate”) of more than 0.5 micrograms of lead, unless such product
10 complies with the warning requirements in Section 3.2 below. The Daily Lead Exposure Rate
11 shall be calculated using the following formula: micrograms of lead per gram of product,
12 multiplied by grams of product per serving of the product (using the largest serving size
13 appearing on the product label), multiplied by servings of product per day (using the largest
14 recommended number of servings per day appearing on the product label), which equals
15 micrograms of lead exposure per day. The term “Distributing into California,” as used herein,
16 means to ship any of the Covered Products into California for sale in California or to sell or
17 provide any of the Covered Products to any person or entity Sportron know intends to or will
18 ship any of the Covered Products into or sell any of the Covered Products in California.

19 **3.2 Clear and Reasonable Warnings**

20 On and after the Effective Date, for any of the Covered Products that Sportron is
21 manufacturing for sale in California, Distributing into California, or directly selling to any
22 consumer located in California, and that have a Daily Lead Exposure Rate of more than 0.5
23 micrograms of lead, Sportron shall provide the following warning as specified below:

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

26 (The text in the brackets related to cancer in the warning above shall be included only if the
27 Daily Lead Exposure Rate is more than 15 micrograms of lead.) The warning shall be
28 prominently printed on the product label with such conspicuousness, as compared to other

1 words, statements or designs on the label, so as to render it likely to be read and understood by
2 the ordinary purchaser and/or user of the product. The warning shall be the same size as the
3 largest of any other health or safety warnings on the product and the word “**WARNING**” shall
4 be in all capital letters and in bold print.

5 **3.3 Testing**

6 (a) Beginning on the Effective Date and continuing for a period of 4 years thereafter,
7 for any of the Covered Products Sportron is manufacturing for sale in California, Distributing
8 into California, or directly selling to any consumer located in California, Sportron shall have
9 each such product tested for lead content at least one time each quarter by testing three samples
10 (in the form intended for sale to the end-user) randomly selected from the newest lot available.
11 The term “lot,” as used herein, means one manufacturing cycle. Each lot shall be designated by
12 a numbers, letters, or a combination of numbers and letters unique to that lot, and which shall be
13 affixed or printed on each bottle or container of any of the Covered Products in that lot. Each
14 sample to be tested shall be randomly selected using a sound statistical sampling plan, and shall
15 be identified in Sportron’s request to the laboratory for testing as being submitted pursuant to
16 this Consent Judgment.

17 (b) Sportron shall also conduct testing for lead content in accordance to the
18 requirements of Section 3.3(a) above for any of the Covered Products that Sportron stops
19 manufacturing for sale in California, Distributing into California, or directly selling to any
20 consumer located in California, and later recommences manufacturing for sale in California,
21 Distributing into California, or directly selling to any consumer located in California; or if the
22 formula of any of the Covered Products is altered by either the inclusion of a new ingredient, an
23 increase or decrease in the percentage of an existing ingredient, or if any ingredient in such a
24 product is sourced from a different supplier.

25 (c) Testing for lead content under Section 3.3 shall be performed using closed-vessel,
26 microwave-assisted acid digestion employing high-purity reagents, followed by Inductively
27 Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of less than or
28 equal to 0.010 mg/kg; or heat-assisted acid digestion employing high-purity reagents, followed

1 by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of
2 quantification of less than or equal to 0.010 mg/kg; or any other testing method agreed upon in
3 writing by the Parties.

4 (d) Testing for lead content under Section 3.3 shall be performed by a laboratory
5 certified by the California Environmental Laboratory Accreditation Program and experienced in
6 testing for lead levels in foods and dietary and nutritional supplements.

7 (e) Sportron shall arrange for copies of all laboratory reports with results of testing
8 for lead content under Section 3.3 to be automatically sent by the testing laboratory directly to
9 ERC within ten working days after completion of that testing. These reports shall be deemed
10 and treated as confidential information. Sportron shall also retain copies of all such laboratory
11 reports for a period of four years following the date of each such report, and shall provide copies
12 of such reports to ERC within 15 working days of any written request from ERC.

13 (f) Nothing in this Consent Judgment shall limit Defendants' ability to conduct, or
14 require that others conduct, additional testing of the Covered Product, including the raw
15 materials used in their manufacture.

16 (g) The testing and sampling methodology set forth in Section 3.3 is a result of
17 negotiation and compromise, and is accepted by the Parties for the purposes of settling,
18 compromising, and resolving the issues in this Action, including future compliance with Section
19 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except
20 for the purposes of determining future compliance with this Consent Judgment.

21 3.3 Products in the Stream of Commerce

22 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products
23 that Sportron put into the stream of commerce before the Effective Date. No later than 10 days
24 after the Effective Date, Sportron shall provide ERC with the last lot number and expiration date
25 for each of the Covered Products in the stream of commerce as of the Effective Date.

26 4. SETTLEMENT PAYMENT

27 4.1 Total Payment

28 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,

1 ERC's expenses and costs of litigation, and ERC's attorney fees, Sportron shall make a total
2 payment of \$60,000 ("Total Settlement Amount") to ERC. Sections 4.2-4.5 below describe the
3 agreed partition of the Total Settlement Amount. The schedule of payment of the Total
4 Settlement Amount shall be as follows: (a) an initial payment of \$5,000 within 10 days after the
5 Effective Date; and (b) a payment of \$5,000 on or before the first date of each of the 11
6 consecutive months following the month containing the Effective Date. Each payment shall be
7 made by check payable to "Environmental Research Center – ERC Escrow Account" and sent by
8 first-class registered or certified mail, or overnight delivery directly to ERC at the following
9 address:

10 Environmental Research Center
11 3111 Camino Del Rio North, Suite 400
12 San Diego, CA 92108

13 Sportron shall also issue an IRS Federal Tax Form 1099 for the each of the above payments to
14 ERC. In the event that ERC does not receive any payment owed under this Consent Judgment
15 within 10 days after its due date, Sportron shall be deemed to be in default of its obligations
16 under this Consent Judgment. ERC shall provide written notice to Sportron of any default; if
17 Sportron fails to remedy the default within two business days of such notice, then all future
18 payments due hereunder shall become immediately due and payable, with interest accruing on
19 unpaid balances due hereunder at 10% per annum pursuant to California Code of Civil Procedure
20 Section 685.010 beginning on the due date of the funds in default.

21 4.2 Civil Penalty

22 As a portion of the Total Settlement Amount, \$5,060 shall be considered a civil penalty
23 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$3,795)
24 of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for
25 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
26 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to
27 Defendant's counsel. ERC will retain the remaining 25% (\$1,265) of the civil penalty.

28 4.3 Payment in Lieu of Further Civil Penalties

As a portion of the Total Settlement Amount, \$15,177.50 shall be considered a payment

1 to ERC in lieu of further civil penalties for activities such as (1) funding the investigating,
2 researching and testing of consumer products that may contain Proposition 65 listed chemicals;
3 (2) funding grants to California non-profit foundations/entities dedicated to public health;
4 (3) funding ERC's Got Lead? Program to assist consumers in testing products for lead content;
5 (4) funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC's
6 database of lead-free products, Proposition 65-compliant products and contaminated products;
7 (6) funding to track and catalog Proposition 65-compliant, contamination-free sources of
8 ingredients used in the products ERC tests; and (7) funding the continued day to day business of
9 enforcement of Proposition 65 matters which address contaminated ingestible products, similar
10 to the subject matter of this Action.

11 4.4 Reimbursement of Expenses and Costs

12 As a portion of the Total Settlement Amount, \$15,200 shall be considered a
13 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of
14 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this
15 matter to Sportron's attention, litigating and negotiating a settlement in the public interest.

16 4.5 Attorney Fees

17 As a portion of the Total Settlement Amount, \$24,562.50 shall be considered a
18 reimbursement to ERC for its attorney fees.

19 5. COSTS AND FEES

20 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
21 fees, costs and expenses in this action.

22 6. RELEASE

23 6.1 ERC, acting on its own behalf and in the public interest, releases Sportron from
24 all claims for violations of Proposition 65 up through the Effective Date based on exposure to
25 lead from the Covered Products as set forth in the Notice of Violations and the Complaint.

26 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
27 Proposition 65 with respect to exposures to lead from the Covered Products.

28 6.3 ERC on behalf of itself only, on the one hand, and Sportron, on the other hand,

1 release and waive all claims they may have against each other and their respective officers,
2 directors, employees, agents, representatives and attorneys for any statements or actions made or
3 undertaken by them or their respective officers, directors, employees, agents, representatives and
4 attorneys in connection with the Notice of Violations or this action.

5 6.4 Nothing in this release is intended to apply to any occupational or environmental
6 exposures arising under Proposition 65, nor shall it apply to any of Sportron's products other
7 than the Covered Products.

8 **7. MOTION FOR COURT APPROVAL**

9 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
10 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
11 Code of Regulations § 3000, *et seq.* This motion shall be served upon Sportron and upon the
12 California Attorney General's Office. Sportron and ERC shall use their best efforts to support
13 entry of this Consent Judgment in the form submitted to the Court for approval.

14 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
15 California Attorney General objects in writing to any term in this Consent Judgment or files an
16 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
17 manner prior to the hearing on the motion. If the concern of the California Attorney General is
18 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
19 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph
20 17 below and notice to the California Attorney General's Office, and upon such notice this
21 Consent Judgment shall be null and void.

22 7.3 This Consent Judgment shall be effective only after it has been entered by the
23 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
24 any purpose.

25 **8. RETENTION OF JURISDICTION**

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

28 ///

1 **9. MODIFICATION OF CONSENT JUDGMENT**

2 This Consent Judgment after its entry by the Court may be modified only upon written
3 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

4 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
5 **RESOLVE DISPUTES**

6 In the event a dispute arises with respect to any Party's compliance with the terms and/or
7 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of
8 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
9 Party in person, by telephone or by written communication before seeking relief from the Court.
10 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in
11 this Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law.
12 The prevailing party in any such dispute brought to this Court for resolution shall be awarded all
13 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing
14 party" means a party who is successful in obtaining relief more favorable to it than the relief the
15 other party was agreeable to providing during the Parties' good faith attempt to resolve the
16 dispute that is the subject of such an enforcement proceeding.

17 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **12. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California.

24 **13. RELATION TO OTHER ACTIONS**

25 This Consent Judgment shall have no application or effect on Sportron for the Covered
26 Products or other products distributed or sold by Sportron to consumers outside the State of
27 California.

28 ///

1 **14. DRAFTING**

2 The terms of this Consent Judgment have been reviewed by the respective legal counsel
3 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the
4 terms and conditions with its legal counsel. The Parties agree that, in any subsequent
5 interpretation or construction of this Consent Judgment, no inference, assumption or presumption
6 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,
7 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
8 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the
9 Parties participated equally in the preparation and drafting of this Consent Judgment.

10 **15. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all
13 prior agreements or understandings, written or oral, with regard to the matters set forth herein.
14 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall
15 be deemed to exist or to bind any of the Parties.

16 **16. EXECUTION IN COUNTERPARTS**

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

20 **17. NOTICES**

21 All notices required by this Consent Judgment to be given to any Party shall be sent by
22 first-class registered or certified mail, or overnight delivery, to the following:

23 **FOR ERC:** Chris Heptinstall, Executive Director
24 Environmental Research Center
25 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

26 Philip T. Emmons
27 Law Office of Philip T. Emmons
1990 North California Blvd., 8th Floor
28 Walnut Creek, CA 94596-3742

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Karen A. Evans
Law Office of Karen A. Evans
4218 Biona Place
San Diego, CA 92116

FOR SPORTRON: Keith Harding
Sportron International, Inc.,
6029 North McDonald Street
Melissa, TX 75454

Michael B. Fisher
Buchalter Nemer
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017-2457

18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT

Each person signing this Consent Judgment on behalf of a Party certifies that he or she is fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party, and to legally bind that Party to this Consent Judgment. Each person signing this Consent Judgment on behalf of a Party represents and warrants that he or she has read and understands this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on behalf of that Party.

IT IS SO STIPULATED:

Dated: 5/1/2013

ENVIRONMENTAL RESEARCH CENTER

By: 
Chris Heptinstall
Executive Director

Dated: April 30, 2013

SPORTRON INTERNATIONAL, INC.

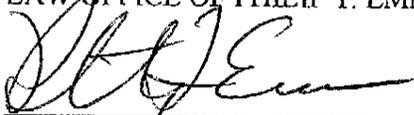
By: Keith Harding
Name: KEITH HARDING
Title: C.E.O.

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APPROVED AS TO FORM:

Dated: 5/1/13

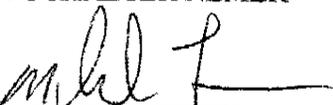
LAW OFFICE OF PHILIP T. EMMONS

By: 

Philip T. Emmons
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

Dated: 5/1/13

BUCHALTER NEMER

By: 

Michael B. Fisher
Attorney for Defendant
SPORTRON INTERNATIONAL, INC.

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: AUG - 1 2013

MARLA J. MILLER
Judge of the Superior Court

EXHIBIT A – [Notice of Violations]

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EXHIBIT A

LAW OFFICES OF
ANDREW L. PACKARD
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

August 17, 2010

VIA CERTIFIED MAIL

Current President or CEO
Sportron International, Inc.
6029 N Mcdonald St
Melissa, TX – 75454

Agent for Service of Process: KEITH J. HARDING
115 INDUSTRIAL BOULEVARD
MC KINNEY, TX - 75069

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

Dear Sirs,

This firm represents the Environmental Research Center (hereafter, “ERC”), a non-profit corporation organized under California’s Non-Profit Public Benefit Corporation Law in connection with this notice of violations of California’s Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as “Proposition 65”).

ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety and corporate responsibility. ERC has documented the violations of Proposition 65 described herein, and this letter serves to provide notification of these violations to you and to the public enforcement agencies. Pursuant to §25249.7(d) of the statute, ERC intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator(s).

The names of the violator(s) covered by this notice are: Sportron International, Inc. (hereafter, the “Violator(s)”). The Violator(s) manufacture, market, distribute and/or sell in California the following products causing exposures to lead and lead compounds:

Sportron International FoodMatrix UltraGuard Forte
Sportron International Gentron
Sportron International Cleanse Senna Herbal Supplement Blend
Sportron International FoodMatrix Weight Management Formula Turbo Zing!
Sportron International Respitron
Sportron International FoodMatrix G12 Vegetable & Greens drink Mix

EXHIBIT **A**

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

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

Duration of violations. Each of these ongoing violations has occurred on every day since at least August 17, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against the Violator(s) unless the Violator(s) agree in an enforceable written instrument to: (1) recall products already sold; (2) take effective measures to prevent unwarned lead exposures from being caused by products sold in the future; and (3) pay an appropriate civil penalty. In keeping with the public interest goals of the statute and my client's objectives in issuing this notice, ERC is interested 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. ERC's Executive Director is Chris Heptinstall and the organization's mailing address is: 5694 Mission Center Road, #199, San Diego, CA 92108. Tel. (619) 309-4194. However, ERC has retained this firm in connection with this matter; therefore, all communications regarding this Notice of Violation may be directed to my attention at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

Attachments:

OEHHA Summary

Certificate of Merit (w/o AG attachments)

Certificate of Service

List of Service

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

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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

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

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

no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

CERTIFICATE OF MERIT

Re: the Environmental Research Center's Notice of Proposition 65 Violations Issued to Sportron International, Inc.

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 17, 2010



Andrew L. Packard

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 August 17, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: 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:

VIA CERTIFIED MAIL
Current President or CEO
Sportron International, Inc.
6029 N McDonald St
Melissa, TX – 75454

Agent for Service of Process: KEITH J. HARDING
115 INDUSTRIAL BOULEVARD
MC KINNEY, TX - 75069

On August 17, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT (including supporting documentation required by Title 11 CCR §3102)** 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 August 17, 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 August 17, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

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

August 17, 2010

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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
347 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
Post Office Drawer D
Independence, CA 93526

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.*

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District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95603

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 95814

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 92112

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 95202

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

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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
100 Courthouse Square, 2nd Floor
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

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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
San Francisco, CA 94102

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