Philip T. Emmons (SBN 124902)
Law Office of Philip T. Emmons
1990 North California Blvd., 8th Floor
Walnut Creek, CA 94596-3742
T: (925) 287-6436
F: (925) 287-6437

Attorney for Plaintiff
Environmental Research Center, Inc.

Margaret Carew Toledo (SBN 181227)
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814
T: (916) 551-2592
F: (916) 553-4011

Attorneys for Defendant
Vemma Nutrition Company

ENDORSED
FILED
ALAMEDA COUNTY

AUG 9 3 2012

CLERK OF THE SUPERIOR COURT
By LINDNELL WILLIAMS
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, INC., Plaintiff, v. VEMMA NUTRITION COMPANY, Defendant.	Case No. RG12627120 ~~[PROPOSED]~~ **STIPULATED CONSENT JUDGMENT**

1. INTRODUCTION

1.1 This Action arises out of alleged violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code§25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65").

1.2 Plaintiff Environmental Research Center, Inc. ("ERC"), a California non-profit corporation acting as a private enforcer of Proposition 65, brings this Action in the public interest pursuant to California Health and Safety Code §25249.7(d).

1.3 Defendant Vemma Nutrition Company ("Defendant") is an Arizona corporation. For the purposes of this Consent Judgment, Vemma acknowledges that it employs ten or more persons, and it is a "person in the course of doing business" within the meaning of Proposition 65.

1.4 Defendant and ERC are hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties".

1.5 On September 13, 2010, pursuant to California Health and Safety Code § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations") on the California Attorney General, other public enforcers, and Defendant. A true and correct copy of the Notice of Violations is attached hereto as Exhibit A. The Notice of Violations contains allegations that Defendant manufactured, distributed and/or sold in California the following three products ("Covered Products"), which contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin:

New Vision Cleanse, Burn & Balance
New Vision OPC Grape Seed Extract
New Vision Organic Greens Green Apple Flavor

Neither the California Attorney General nor any other public enforcer has filed suit against Defendant with regard to the Covered Products or the alleged violations.

1.6 More than 70 days after service of the Notice of Violations, ERC filed the Complaint in this Action (the "Complaint") for injunctive relief and civil penalties. The Complaint, based on the Notice of Violations, contains allegations that Defendant has exposed and continues to expose persons in California who use and/or handle the Covered Products to the chemical lead in excess of the exposure levels allowed under Proposition 65 without first providing clear and reasonable warnings, in violation of California Health and Safety Code §25249.6. Defendant denies all material allegations contained in the Notice of Violation and the Complaint, asserts numerous affirmative defenses to the allegations of violations, and specifically denies that the Covered Products require Proposition 65 warnings or otherwise harm any person.

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

1.8 Nothing in this Consent Judgment, nor compliance with this Consent Judgment, shall constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law. Nothing in this Consent Judgment shall be construed as giving rise to any presumption or inference of admission or concession by Defendant as to any fault, wrongdoing or liability whatsoever, including, but not limited to, any alleged violation of Proposition 65.

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

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

1.11 The only products covered by this Consent Judgment are the Covered Products, and the only chemical covered by this Consent Judgment is the chemical lead as specifically related to the Covered Products only.

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to the terms set forth herein.

3. INJUNCTIVE RELIEF

3.1 Testing of the Covered Products

(a) Beginning the Effective Date and continuing for four years thereafter, Defendant shall test for lead content in three randomly selected samples (in the form intended for sale to the end-user) of every lot of each of the Covered Products that is manufactured on or after the Effective Date. The three samples shall be randomly selected for such testing using a sound statistical sampling plan, and shall be identified in Defendant's request to the laboratory for

testing as being submitted pursuant to this Consent Judgment.

(b) Defendant shall have either of the following two laboratories perform the testing for lead content using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) or any other testing method agreed upon in writing by the Parties:

(1) Exova, 9240 Santa Fe Springs Road, Santa Fe Springs, CA 90670; telephone (562) 948-2225.

(2) American Analytical Chemistry Laboratories Corp., 711 Parkland Court, Champaign, IL 61821; telephone (217) 352-6060.

Should neither of these two laboratories be available to perform the testing, Defendant shall use another laboratory certified by the California Environmental Accreditation Program or a laboratory that is approved by, accredited by, or registered with the United States Food and Drug Administration.

(c) Defendant shall provide ERC any test results within 15 days of any written request from ERC.

(d) For purposes of this Consent Judgment only, daily lead exposure levels shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product (lead content found using the above described testing), multiplied by grams of product per serving of the product (using the serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day.

(e) Nothing in this Consent Judgment shall limit Defendant's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

(f) The testing and sampling methodology set forth in this Section 3.1 is a result of negotiation and compromise, and is accepted by the Parties for the purposes of settling, compromising, and resolving the issues in this action, including future compliance with Sections 3.1 and 3.2 of this Consent Judgment, and shall not be used for any purpose or in any other

matter, except for the purposes of determining future compliance with this Consent Judgment.

3.2 **Warnings**

If the above described testing shows an average daily lead exposure level of greater than 0.5 micrograms for any lot of the Covered Products, none of the product from that lot shall be distributed or sold in California unless the following warning is provided on the product labels of any of the product from that lot distributed or sold in California:

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

The text in brackets in the warning above is optional, except that the term "cancer" must be included only if the maximum daily dose recommended on the label contains more than 15 micrograms of lead.

In the event that a warning is used, the warning shall be prominently affixed to or printed upon the product label with such conspicuousness, as compared with other words, statements or designs on the label, so as to render it likely to be read and understood by an ordinary purchaser or user of the product. 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.

3.3 **Change in Recommended Dosage for New Vision OPC Grape Seed Extract**

Defendant shall change the language of the Recommended Dosage on the product labels for the product New Vision OPC Grape Seed Extract to include the following: "Do not exceed two capsules per day."

3.4 **Discontinuation of Product New Vision Organic Greens Green Apple Flavor**

Defendant acknowledges that it has discontinued the distribution and sales of the product New Vision Organic Greens Green Apple Flavor, and Defendant agrees it will not reintroduce that product into the marketplace, meaning Defendant will not market, distribute and/or sell that product at any time after the Effective Date.

3.5 **Products in the Stream of Commerce**

The injunctive relief set forth in this Section 3 shall not apply to Covered Products that

Defendant puts into the stream of commerce before the Effective Date.

4. SETTLEMENT PAYMENT

4.1 Total Payment

In full and final satisfaction of civil penalties, payment in lieu of further civil penalties, ERC's expenses and costs of litigation, and ERC's attorney fees, Defendant shall, within 10 days after the Effective Date, issue a single check in the amount of $90,000 ("Total Settlement Amount"), made payable to "Environmental Research Center – ERC Escrow Account", and send the check by first-class registered or certified mail, or overnight delivery, directly to ERC at the following address:

Environmental Research Center
3111 Camino del Rio North, Suite 400
San Diego, CA 92108

Defendant shall also issue a single IRS Federal Tax Form 1099 for the above payment to ERC. Sections 4.2-4.5 below describe the agreed partition of the Total Settlement Amount.

4.2 Civil Penalty

As a portion of the Total Settlement Amount, $10,000 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% ($7,500) of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c), and a copy of the transmittal letter will be sent to Defendant's counsel. ERC will retain the remaining 25% ($2,500) of the civil penalty.

4.3 Payment in Lieu of Further Civil Penalties

As a portion of the Total Settlement Amount, $24,312.50 shall be considered a payment to ERC in lieu of further civil penalties for activities such as (1) funding the investigating, researching and testing of consumer products that may contain Proposition 65 listed chemicals; (2) funding grants to California non-profit foundations/entities dedicated to public health; (3) funding the ERC Eco Scholarship Fund for high school students in California interested in pursuing an education in the field of environmental sciences; (4) funding ERC's Operation Education Program designed to provide funding to educators in the State of California public

school system for creative and effective environment and environmental sciences teaching projects; (5) funding ERC's Voluntary Compliance Program to work with companies not subject to Proposition 65 to reformulate their products to reduce potential consumer exposures to Proposition 65 listed chemicals; (6) funding ERC's RxY Program to assist various medical personnel to provide testing assistance to independent distributors of various products; (7) funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (8) funding post-settlement monitoring of past consent judgments; (9) funding to maintain ERC's database of lead-free products, Proposition 65-compliant products and contaminated products; (10) funding to track and catalog Proposition 65-compliant, contamination-free sources of ingredients used in the products ERC tests; and (11) funding the continued day to day business of enforcement of Proposition 65 matters which address contaminated ingestible products, similar to the subject matter of this Action.

4.4 **Reimbursement of Expenses and Costs**

As a portion of the Total Settlement Amount, $15,000 shall be considered a reimbursement to ERC for its reasonable investigation costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement in the public interest.

4.5 **Attorney Fees**

As a portion of the Total Settlement Amount, $40,687.50 shall be considered a reimbursement to ERC for its attorney fees.

5. COSTS AND FEES

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

6. RELEASE

6.1 This Consent Judgment is a full, final, and binding resolution between ERC, on its own behalf and in the public interest, and Defendant of any alleged violation of Proposition 65 or its implementing regulations for the Covered Products regarding lead.

6.2 ERC, acting on its own behalf and in the public interest, releases Defendant, and

its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, successors, assigns and attorneys, and suppliers, manufacturers, distributors, wholesalers, retailers and all other entities in the distribution chain of any of the Covered Products ("Released Parties"), from all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead from the Covered Products as set forth in the Notice of Violations and the Complaint.

6.3 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from the Covered Products as set forth in the Notice of Violations.

6.4 ERC, on behalf of itself only, hereby also 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 attorney's 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 that were manufactured before the Effective Date or the facts alleged in the Notice of Violations or the Complaint, including without limitation any and all claims concerning exposure of any person to lead in the Covered Products that were manufactured before the Effective Date.

6.5 **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 Notice of Violations or the Complaint and relating to the Covered Products that were manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself only, also waives California Civil Code section 1542 as to any such unknown claims. California 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.**

6.6 ERC on behalf of itself only, on the one hand, and Defendant, on the other hand,

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

7. **MOTION FOR COURT APPROVAL**

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

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

7.3 This Consent Judgment shall be effective only after it has been entered by the Courtand shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties.

8. **RETENTION OF JURISDICTION**

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

9. **MODIFICATION OF CONSENT JUDGMENT**

This Consent Judgment after its entry by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly noticed motion of any Party to modify the Consent Judgment and upon entry

of a modified Consent Judgment by the Court.

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

In the event a dispute arises with respect to any Party's compliance with the terms and/or conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of another Party shall make a good faith attempt to resolve the dispute by conferring with the other Party in person, by telephone or by correspondence before seeking relief from the Court. If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in this Court pursuant to Code of Civil Procedure §664.4 or any other valid provision of the law. The prevailing party in any such dispute brought to this Court for resolution shall be awarded all reasonable costs and 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 the other party was agreeable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

11. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

12. GOVERNING LAW

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

13. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with its counsel. The Parties agree that, in any subsequent interpretation or construction of this Consent Judgment, no inference, assumption or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' counsel prepared and/or drafted all or any

portion of this Consent Judgment. It shall be conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

14. ENTIRE AGREEMENT

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

15. EXECUTION IN COUNTERPARTS

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

16. NOTICES

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

FOR ERC:

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

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

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

FOR DEFENDANT:

Allison Tengan
Vemma Nutrition Company
8322 E. Hartford Drive
Scottsdale, AZ 85255

Margaret Carew Toledo
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814

17. **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: 3/13/2012

ENVIRONMENTAL RESEARCH CENTER

By: _____
Chris Heptinstall
Executive Director

Dated: 3-12-2012

VEMMA NUTRITION COMPANY

By: _____
BK Boreyko
Chief Executive Officer

APPROVED AS TO FORM:

Dated: 3/13/12

LAW OFFICE OF PHILIP T. EMMONS

By: _____
Philip T. Emmons
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

Dated: 3-12-12

MENNEMEIER, GLASSMAN & STROUD LLP

By: _____
Margaret Carew Toledo
Attorney for Defendant
VEMMA NUTRITION COMPANY

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 03 2012

DAVID E. HUNTER
Judge of the Superior Court

EXHIBIT A – [Notice of Violations to Defendant]

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

September 13, 2010

VIA CERTIFIED MAIL

Current CEO or President
New Vision USA, Inc.
8322 E Hartford Dr
Scottsdale, AZ 85255

Benson K. Boreyko, Director
(New Vision USA, Inc.'s Agent
for Service of Process)
8322 E. Hartford Drive
Scottsdale, AZ 85255

Current CEO or President
Vemma Nutrition Company
8322 E Hartford Dr
Scottsdale, AZ 85255

National Registered Agents, Inc.
(Vemma Nutrition Company's Agent
for Service of Process)
2875 Michelle Drive, Suite 100
Irvine, CA 92606

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: New Vision USA, Inc., and Vemma Nutrition Company (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:

New Vision Cleanse, Burn & Balance
New Vision OPC Grape Seed Extract
New Vision Organic Greens Green Apple Flavor

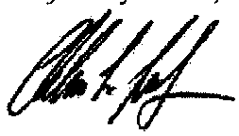
On February 27, 1987, the State of California officially listed lead as a substance known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as a substance known to cause cancer.

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 September 13, 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 (to New Vision USA, Inc., Vemma Nutrition Company, and their Registered Agents of Process only)
Certificate of Merit (Additional Supporting Information to AG only)
Certificate of Service
List of Service

CERTIFICATE OF MERIT

Re: the Environmental Research Center's Notice of Proposition 65 Violations Issued to New Vision USA, Inc., and Vemma Nutrition Company

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: September 13, 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 September 13, 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:

Current CEO or President
New Vision USA, Inc.
8322 E Hartford Dr
Scottsdale, AZ 85255

Current CEO or President
Vemma Nutrition Company
8322 E Hartford Dr
Scottsdale, AZ 85255

Benson K. Boreyko, Director
(New Vision USA, Inc.'s Agent
for Service of Process)
8322 E. Hartford Drive
Scottsdale, AZ 85255

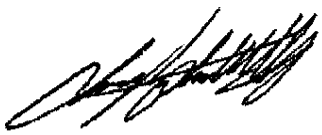
National Registered Agents, Inc.
(Vemma Nutrition Company's Agent
for Service of Process)
2875 Michelle Drive, Suite 100
Irvine, CA 92606

On September 13, 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 September 13, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 13, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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