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SEP 01 2011

LOS ANGELES
SUPERIOR COURT

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AUG 22 2011

DEPT. 57

1 GIDEON KRACOV (SBN 179815)
801 S. Grand Avenue, Ste. 1100
2 Los Angeles, CA 90017
213.629.2071
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4 Attorneys for Plaintiff
5 Environmental Research Center

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 ENVIRONMENTAL RESEARCH CENTER,)
a non-profit California corporation;)
12 Plaintiff,)
13 v.)
14 NNC LLC dba NATURADE, a Delaware)
limited liability company; DOES 1 through 10;)
15 Defendant(s).)
16

Case No. BC465087
Assigned to Hon. Ralph W. Dau
~~PROPOSED~~ ORDER APPROVING
CONSENT JUDGMENT
Health & Safety Code §25249.5, *et seq.*
Dept: 57

1 Plaintiff Environmental Research Center's Motion for Court Approval of the Consent
2 Judgment came on regularly for hearing before this Court on August 24, 2011, the Honorable
3 Ralph W. Dau, presiding, with attorneys for all parties in that case having had the opportunity
4 to be heard by this Court. After considering the proposed Consent Judgment between Plaintiff
5 and Defendant NNC LLC dba Naturade, the moving papers, declarations, pleadings, oral
6 arguments and all other relevant documents in the court file, and any other matters presented to
7 this Court, and GOOD CAUSE APPEARING THEREFORE, this Court GRANTS the Motion
8 for Court Approval of the Consent Judgment, and makes the following findings pursuant to
9 California Health & Safety Code section 25249.7(f) and 11 Cal. Code Regs. section 3201, *et*
10 *seq.*:

- 11 1. The warning required by the Consent Judgment complies with Proposition
12 65;
- 13 2. The awards of attorney's fees and costs provided in the Consent Judgment is
14 reasonable under California law;
- 15 3. The penalties provided by the Consent Judgment are reasonable; and
- 16 4. The Consent Judgment is in the public interest.

17 Therefore, for the foregoing reasons, the Consent Judgment shall be entered as the
18 Judgment of this Court.

19 IT IS SO ORDERED.

20
21 DATE: ~~SEP 01 2011~~

RALPH W. DAU
Honorable Ralph W. Dau
Judge of the Superior Court

PROOF OF SERVICE

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I, Gideon Kracov, being duly sworn, deposes and says:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 801 S. Grand Ave., 11th Fl., LA, CA 90017. On 8/19, 2011, I served this list of persons with the following documents: [PROPOSED] ORDER APPROVING CONSENT JUDGMENT

The documents were served on:


Todd Harrison
Venable LLC
575 7th Street, NW
Washington, DC 20004



by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at 801 S. Grand Ave., Los Angeles, California, addressed as set forth above. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 8/19, 2011 at Los Angeles, California.



Gideon Kracov

1 GIDEON KRACOV (SBN 179815)
801 S. Grand Avenue, Ste. 1100
2 Los Angeles, CA 90017
213.629.2071
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gk@gideonlaw.net

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LOS ANGELES
SUPERIOR COURT

4 Attorneys for Plaintiff
5 ENVIRONMENTAL RESEARCH CENTER DEPT. 57

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 ENVIRONMENTAL RESEARCH CENTER, a) CASE NO. BC465087
non-profit California corporation,)
12) Assigned to Honorable Ralph W. Dau
Plaintiff,)
13)
14 NNC LLC dba NATURADE, a Delaware) ~~[REVISED PROPOSED]~~ STIPULATED
limited liability company; DOES 1 though 10,) CONSENT JUDGMENT
15)
Defendant(s).) Dept: 57
16)
17)
18)

19 IT IS HEREBY STIPULATED AND AGREED by the Parties hereto, as follows:

20 WHEREAS:

21 A. ENVIRONMENTAL RESEARCH CENTER (“ERC”) is a citizen enforcer of
22 California Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”) and is a non-profit
23 corporation organized under California’s Non-Profit Public Benefit Corporation Law.

24 B. NNC LLC is a Delaware limited liability company that does business as
25 NATURADE (“NATURADE”). NATURADE allegedly manufactured, packaged, distributed,

26 ~~[REVISED PROPOSED]~~ STIPULATED CONSENT JUDGMENT

1 marketed, and/or sold products containing lead and lead compounds sold in the State of
2 California including:

- 3 Naturade 100% Soy Protein Booster – Natural
- 4 Naturade Calcium Shake – Vanilla
- 5 Naturade Complete Cleanse Step 1 All-Natural Herbs
- 6 Naturade Cleanse Step 2 Bio-Active Fiber
- 7 Naturade Veg Protein Booster Natural Flavor
- 8 Naturade N-R-G Protein Booster Vanilla Flavor
- 9 Naturade Total Soy Meal Replacement Vanilla
- 10 Naturade Total Soy Meal Replacement Chocolate (hereinafter “**the Product(s)**”).

11 Any other products are not subject to the injunctive provisions herein, and are not covered by the
12 release of liability herein;

13 C. “Parties” is intended to mean ERC and NATURADE only;

14 D. On February 27, 1987, the State of California officially listed the chemical lead as a
15 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code §
16 25249.8;

17 E. On October 1, 1992, the State of California officially listed the chemicals lead and
18 lead compounds as chemicals known to cause cancer, pursuant to California Health and Safety
19 Code § 25249.8;

20 F. The Products have allegedly been sold by NATURADE for use in California since
21 at least October 2009;

22 G. On September 24, 2010 and December 23, 2010, ERC served NATURADE and
23 each of the appropriate public enforcement agencies with a document entitled "60-Day Notice"
24 that provided NATURADE and the public enforcement agencies with notice that NATURADE
25 was in violation of Proposition 65 for failing to warn purchasers and individuals using the
26 Products that the use of the Products exposes them to lead, a chemical known to the State of

1 California to cause cancer and/or reproductive toxicity (“**Prop. 65 Notices**”);

2 H. The Action was brought by ERC in the public interest at least sixty (60) days after
3 ERC provided notice of the Proposition 65 violations to NATURADE and the appropriate public
4 enforcement agencies and none of the public enforcement agencies had commenced and begun
5 diligently prosecuting an action against NATURADE for such violations;

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

10 J. The Parties enter into this Consent Judgment to settle disputed claims between
11 them and to avoid prolonged litigation. By execution of this Consent Judgment, NATURADE
12 does not admit any violations or the applicability of Proposition 65. Except for the
13 representations made above, nothing in this Consent Judgment shall be construed as an
14 admission by NATURADE or Plaintiff of any fact, issue of law, or violation of law, nor shall
15 compliance with this Consent Judgment constitute or be construed as an admission by
16 NATURADE or Plaintiff of any fact, issue of law, or violation of law;

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

21 L. The “**Effective Date**” of this Consent Judgment shall be the date upon which this
22 Consent Judgment is entered by the Court.

23
24 ///

25
26 [REVISED PROPOSED] STIPULATED CONSENT JUDGMENT.

1 2. For Products that cause exposures in excess of that permitted by Paragraph 1,
2 unless NATURADE can prove that the excess exposure is caused solely by “naturally occurring”
3 lead at the “lowest level currently feasible,” as set forth in 27 California Code of Regulations §
4 25501(a), NATURADE shall, at the point of manufacture, prior to shipment to California, or
5 prior to distribution within California, (1) affix to or print on the Product container, cap, label, or
6 unit package, or (2) display at the point of sale of the Products the following warning (the
7 language in brackets in the warning below is optional):
8

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

11 The term “cancer” shall be included in the warning only if there is an exposure to a daily dose of
12 more than 15 micrograms of lead when taken as directed on the Product’s label and as defined by
13 the quality control methodology set forth in paragraph 4 below.
14

15 3. The warning required by paragraph 2 above shall be prominently affixed to, printed
16 on, or displayed proximately to the point of sale of each Product with such conspicuousness, as
17 compared with other words, statements, designs, or devices on the labeling as to render it likely
18 to be read and understood by an ordinary individual under customary conditions of purchase or
19 use. If the warning is displayed on the product container or labeling, the warning shall be at least
20 the same size as the largest of any other health or safety warnings on the product container or
21 labeling, and the word “warning” shall be in all capital letters and in bold print. If printed on the
22 labeling itself, the warning shall be contained in the same section of the labeling that states other
23 safety warnings concerning the use of the product. The requirement for product labeling set forth
24 herein is imposed pursuant to the terms of this Consent Judgment and is recognized by the parties
25

1 as not being the exclusive method of providing a warning for the Products under Proposition 65
2 and its implementing regulations.

3 4. Once a year, on or before the anniversary of the entry of the Consent Judgment,
4 NATURADE shall undertake testing of the Products. NATURADE (itself or through another)
5 shall test at least two (2) randomly-selected samples of each Product for lead content, to confirm
6 that the daily dose is no more than .5 micrograms of lead plus the allowable amounts of the lead
7 for the ingredients listed in Table 1A when taken as directed on the Product's label. All testing
8 pursuant to this Consent Judgment shall be performed by a laboratory certified by the California
9 Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory
10 that is approved by, accredited by, or registered with the United States Food & Drug
11 Administration for the analysis of heavy metals. The method of selecting samples for testing
12 must comply with the regulations of the Food and Drug Administration as set forth in Title 21,
13 Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for
14 lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and
15 closed-vessel, microwave-assisted digestion employing high-purity reagents¹ or any other testing
16 method agreed upon in writing by the parties. Nothing in this Consent Judgment shall limit
17 NATURADE's ability to conduct, or require that others conduct, additional testing of the
18 Products, including the raw materials used in their manufacture. This Consent Judgment,
19 including the testing and sampling methodology set forth in this paragraph, is the product of
20 negotiation and compromise, and is accepted by the parties for purposes of settling,
21
22
23

24 _____
25 ¹ See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and

1 compromising, and resolving issues disputed in this action, including future compliance by
2 NATURADE with this Consent Judgment, and shall not be used for any other purpose, or in any
3 other matter and, except for the purpose of determining future compliance with this Consent
4 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed
5 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g). For
6 the first two years from the date of this Consent Judgment, NATURADE shall provide any test
7 results and documentation to ERC within 30 working days of completion of the testing;
8 thereafter upon written request from ERC, and shall retain all test results and documentation
9 from the date testing commenced.
10

11 5. The requirements of paragraphs 1, 2, 3 and 4 above, will only apply to any time in
12 which NATURADE is a “person in the course of doing business,” as that term is defined in
13 Health and Safety Code § 25249.11(b). NATURADE represents that at the time it stipulated to
14 entry of this Consent Judgment it was not a “person in the course of doing business” because it
15 had fewer than 10 employees. NATURADE represents that it understands that even if
16 NATURADE is not a “person in the course of doing business” under Proposition 65, other
17 companies in its chain of distribution (such as manufacturers, retailers, or distributors) that have
18 10 or more employees are not exempt from Proposition 65 and could violate Proposition 65 by
19 knowingly and intentionally exposing individuals to chemicals contained in NATURADE
20 products without first giving a clear and reasonable warning.
21

22 6. If at any time in the future NATURADE employs 10 or more employees, it will
23
24

25 Children’s Vitamins, J. Agric. Food Chem. 2008, 56, 6892-96.

26 [REVISED PROPOSED] STIPULATED CONSENT JUDGMENT

1 notify ERC of this fact within 30 days. If ERC sends a written request to NATURADE for proof
2 of the number of employees of NATURADE, within 45 days NATURADE will provide all
3 appropriate documentation to ERC showing the number of employees it has employed in the
4 previous 24 months.

5 7. NATURADE within nine (9) months of the Effective Date will put a recommended
6 daily dose in writing on the label for all the Products. NATURADE will comply with this
7 requirement regardless of whether it is a “person in the course of doing business,” as that term is
8 defined in Health and Safety Code § 25249.11(b).

9 8. NATURADE within thirty (30) days of the Effective Date will instruct all of its
10 customer service personnel responding to consumer inquiries by phone, e-mail or other
11 correspondence not to consume more than the a recommended daily dose on the writing on the
12 label for all the Products. NATURADE will comply with this requirement regardless of whether
13 it is a “person in the course of doing business,” as that term is defined in Health and Safety Code
14 § 25249.11(b).

15 9. **Civil Penalty Assessment.** NATURADE agrees to pay a civil penalty in the
16 amount of \$6,675.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff shall remit 75% of
17 this amount to the State of California pursuant to Health & Safety Code §25192.

18 10. **Payment In Lieu of Further Civil Penalties.** NATURADE agrees to make an
19 additional payment in lieu of further civil penalties in the amount of \$19,825.00 to ERC for
20 projects to reduce exposures to toxic chemicals, and to increase consumer, worker and
21 community awareness of the health hazards posed by toxic chemicals.

22 ///

23 [REVISED PROPOSED] STIPULATED CONSENT JUDGMENT

1 11. **Reimbursement of Plaintiff's Fees and Costs.** NATURADE agrees to
2 reimburse Plaintiff's reasonable investigative, expert and attorneys' fees and costs incurred as a
3 result of investigating and bringing this matter to the attention of NATURADE, and negotiating a
4 settlement in the public interest; these fees and costs total \$26,000.00.

5 12. **Payment Schedule.** Pursuant to Paragraphs 9, 10 and 11 herein, NATURADE
6 agrees to remit the total amount of \$52,500.00 to Plaintiff, payable to: the "Law Offices of
7 Gideon Kracov Client Trust Account" and remitted to the Law Office of Gideon Kracov at the
8 law firm's address noted in the Notice provision below. The schedule for the payment of these
9 funds shall be as follows: (a) an initial payment of \$12,500.00 within five (5) calendar days of
10 execution of this Consent Judgment (to be held in trust by ERC until approval of this Consent
11 Judgment); and, if this Consent Judgment is approved, (b) \$10,000.00 payment each for four
12 consecutive months thereafter. In the event that any payments owed under this Consent
13 Judgment is not remitted on or before its due date, NATURADE shall be deemed to be in default
14 of its obligations under this Consent Judgment. Plaintiff shall provide written notice to
15 NATURADE of any default; if NATURADE fails to remedy the default within two (2) business
16 days of such notice, then all future payments due hereunder shall become immediately due and
17 payable, with the prevailing federal funds rate applying to all interest accruing on unpaid
18 balances due hereunder, beginning on the due date of the funds in default.

19 13. **Plaintiff's Release of NATURADE; includes A "Downstream Release."**
20 Plaintiff, acting on behalf of itself and acting on behalf of the general public, permanently and
21 fully releases NATURADE, its parents, subsidiaries, affiliates (including those companies that
22 are under common ownership and/or common control), shareholders, directors, members,
23 officers, employees, and attorneys, and each entity to whom each of them directly or indirectly
24 distributed or sold the Products, including iHerb, Inc. but not limited to distributors, wholesalers,
25 customers, retailers, franchisees, and any other person or entity in the course of doing business

1 who distributed, marketed or sold the products, from all claims of any nature asserted in the Prop.
2 65 Notices.

3 14. **Limits of Release.** Nothing in this release is intended to apply to any
4 occupational or environmental exposures arising under Proposition 65 nor shall it apply to any
5 NATURADE products not set forth on Exhibit A to this Consent Judgment.

6 15. **Release of Environmental Research Center.** NATURADE, by this Consent
7 Judgment, waives all rights to institute any form of legal action against ERC for all actions or
8 statements made or undertaken by ERC in the course of seeking enforcement of Proposition 65
9 against the named NATURADE by means of the Prop. 65 Notices.

10 16. **Motion for Approval of Consent Judgment/Notice to the California Attorney**
11 **General's Office.** Upon execution of this Consent Judgment by the Parties, Plaintiff shall notice
12 a Motion for Approval & Entry of Consent Judgment in the Los Angeles Superior Court pursuant
13 to 11 California Code of Regulations §3000, *et seq.* This motion shall be served upon all of the
14 Parties to the Action and upon the California Attorney General's Office. In the event that the
15 Court fails to approve and order entry of the judgment, this Consent Judgment shall become null
16 and void upon the election of any Party as to them and upon written notice to all of the Parties to
17 the Action pursuant to the notice provisions herein. NATURADE and ERC shall use their best
18 efforts to support entry of this Consent Judgment in the form submitted to the Office of the
19 Attorney General. If the Attorney General objects in writing to any term in this Consent
20 Judgment, the Parties shall use best efforts to resolve the concern in a timely manner and prior to
21 the hearing on the motion to approve this Consent Judgment. If the Attorney General elects to
22 file papers with the Court stating that the People shall appear at the hearing for entry of this
23 Consent Judgment so as to oppose entry of the Consent Judgment, then a party may withdraw
24 from this Consent Judgment prior to the date of the hearing, with notice to all Parties and the
25 Attorney General, and upon such notice this Consent Judgment shall be null and void and any

1 payments made pursuant to Section 12 of this Consent Judgment shall be promptly returned to
2 NATURADE.

3 17. **Severability.** In the event that any of the provisions of this Consent Judgment
4 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be
5 adversely affected.

6 18. **Enforcement.** In the event that a dispute arises with respect to any of the
7 provisions of this Consent Judgment, this Consent Judgment may be enforced pursuant to Code
8 of Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any such
9 dispute shall be awarded all reasonable fees and costs incurred.

10 19. **Governing Law.** The terms of this Consent Judgment shall be governed by the
11 laws of the State of California.

12 20. **Notices.** All correspondence and notices required to be provided under this
13 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail
14 addressed as follows. All correspondence to ERC shall be mailed to:

15 Environmental Research Center
16 5694 Mission Center Road, #199
17 San Diego, CA 92108

18 And to:

19 Gideon Kracov
20 801 S. Grand Ave., 11th Fl.
21 Los Angeles, CA 90017

22 All correspondence to NATURADE shall be mailed to:

23 NNC LLC
24 1 City Boulevard West, Suite 1440
25 Orange, CA 92868

26 And to:

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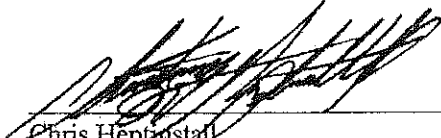
Todd Harrison
Venable LLC
575 7th Street, NW
Washington, DC 20004

21. **Integration & Modification.** This Consent Judgment, together with the Exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the Parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the Parties. This Consent Judgment may be modified only upon the written agreement of the Parties.

22. **Counterparts.** This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

23. **Authorization.** The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: 8/24/11

By: 
Chris Hepinstall
ENVIRONMENTAL RESEARCH CENTER

DATED: _____

By: _____
Jay Drezner
NNC LLC dba NATURADE

IT IS SO ORDERED.

Dated: SEP 01 2011

RALPH W. DAU
Hon. Ralph W. Dau
Judge of the Superior Court

1 Todd Harrison
2 Venable LLC
3 575 7th Street, NW
4 Washington, DC 20004

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9 Judgment may be modified only upon the written agreement of the Parties.

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11 which shall be deemed an original, and all of which, when taken together, shall constitute one
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14 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
15 terms and conditions of this Consent Judgment.

16 DATED: _____

By: _____

Chris Heptinstall
ENVIRONMENTAL RESEARCH CENTER

17
18 DATED: 8/24/11

By: _____

Jay Drezner
NNC LLC dba NATURADE

19
20 IT IS SO ORDERED.

21 Dated: _____

22
23 Hon. Ralph W. Dau
24 Judge of the Superior Court
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26 [REVISED PROPOSED] STIPULATED CONSENT JUDGMENT

PROOF OF SERVICE

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I, Gideon Kracov, being duly sworn, deposes and says:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 801 S. Grand Ave., 11th Fl., LA, CA 90017. On 8/24, 2011, I served this list of persons with the following documents: [REVISED PROPOSED]

CONSENT JUDGMENT

The documents were served on:

Todd Harrison
Venable LLC
575 7th Street, NW
Washington, DC 20004



by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at 801 S. Grand Ave., Los Angeles, California, addressed as set forth above. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 8/24, 2011 at Los Angeles, California.

Gideon Kracov

PROOF OF SERVICE

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The documents were served on:

Todd Harrison
Venable LLC
575 7th Street, NW
Washington, DC 20004

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✓
Via Email – TAharrison@venable.com

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 9/6, 2011 at Los Angeles, California.



Gideon Kracov