

1 Mark S. Pollock SBN 80539
C. Evangeline James SBN 190205
2 POLLOCK & JAMES, LLP
1792 Second Street
3 Napa, CA 94559
Telephone: (707) 257-3089
4 Facsimile: (707) 257-3096

5 Attorneys for Plaintiffs

EMBOISED
FILED
San Francisco County Superior Court

APR 19 2012

CLERK OF THE COURT
BY: MARTA VALLEJO
Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 IN AND FOR THE COUNTY OF SAN FRANCISCO

8 AS YOU SOW, a non-profit corporation,

CASE NO. CGC-11-509377

9 Plaintiffs,

[PROPOSED] CONSENT JUDGMENT

10 v.

11 OLYMPIAN LABS, INC., an Arizona
Corporation and DOES 1 through 50,
12 inclusive,

13 Defendants.

14 _____/

15 This Consent Judgement is entered into by and between As You Sow ("Plaintiff") and
16 OLYMPIAN LABS, INC. ("Defendant") and shall be effective upon entry (the "Effective
17 Date") by the court. Plaintiff and Defendant (each a "Party" and collectively, "the Parties")
18 agree to the terms and conditions set forth below.

19 **1. INTRODUCTION**

20 1.1 Plaintiff is a section 501 (c)(3) non-profit corporation dedicated to, among other
21 causes, the production of the environment, the promotion of human health, the improvement of
22 human health, the improvement of worker and consumer rights, environmental education, and
23 corporate accountability. Plaintiff is based in San Francisco, California and incorporated under
24 the laws of the State of California.

25 1.2 Through its website located at www.olympianlabs.com, Defendant Olympian
26 Labs, Inc. offered for sale certain finished herbal products for ingestion to California consumers
27

1 under the Olympian Labs branded product lines. Plaintiff alleges that certain of the products
2 contain lead, a chemical listed by the State of California as known to cause cancer and
3 reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986
4 ("Proposition 65"), California Health and Safety Code § 25249.5 et seq.; Title 27, California
5 Code of Regulations § 25000 et seq. For purposes of this Consent Judgment only, each of the
6 products is deemed to be a "food" within the meaning of Title 27, California Code of
7 Regulations § 25501.

8 1.3 The specific products Plaintiff alleges contain lead and which are covered by
9 the injunctive provisions of this Consent Judgment as of the Effective Date are to wit: Gin-
10 Zing, Olympian Cleanse, Olympian Energy, and Siesta (the "Products"). Any products not set
11 forth herein are not subject to the injunctive provisions herein.

12 1.4 Pursuant to Health & Safety Code § 25249.8: (a) on February 27, 1987, the State
13 of California listed the chemical lead as a chemical; known to cause reproductive toxicity and
14 (b) on October 1, 1992, the State of California listed the chemicals lead and lead compounds as
15 chemicals known to cause cancer.

16 1.5 On September 30, 2010, Plaintiff served on Defendant and each of the
17 appropriate public enforcement agencies "60-Day Notices" that provided Defendant and the
18 public enforcement agencies with a notice alleging that Defendant was in violation of
19 Proposition 65 for failing to warn the purchasers and individuals using the Products that the use
20 of the Products exposes them to certain chemicals known to the State of California to cause
21 cancer and/or reproductive toxicity (each, a "60-Day Notice"). A copy of each such 60-Day
22 Notice issued to Defendant is attached hereto as Exhibit A. Defendant stipulates for the purpose
23 of this Consent Judgment, only, that the 60-Day Notices sent to it are adequate to comply with
24 Title 27, California Code of Regulations §25903.

25 1.6 On March 22, 2011, Plaintiff filed a Complaint (the "Action") in San Francisco
26 Superior Court, alleging violations of Proposition 65. Plaintiff brings the Action in the public
27

1 interest. Plaintiff has provided 60-Day Notice(s) to Defendant and the appropriate public
2 enforcement agencies and none of the public enforcement agencies has commenced and begun
3 diligently prosecuting and action against Defendant for such alleged violations.

4 1.7 For purposes of this Consent Judgment, each party stipulates that venue is proper
5 and that this Court has subject matter jurisdiction over the allegations contained in this action.
6 Defendant stipulates it employs ten (10) or more employees and employed the (10) or more
7 employees for one year prior to the date of the first 60-Day Notice Letter. The parties enter into
8 this Consent Judgment to settle disputed claims between them and to avoid prolonged litigation.
9 By execution of this Consent Judgment, Defendant does not admit any facts, violations of law,
10 conclusion of law, the applicability of Proposition 65, or the applicability or violation of any
11 other law or standard governing warnings or disclosures in connection with the manufacture,
12 packaging, labeling, distribution and/or sale of the Products. Except for the stipulation made in
13 Sections 1.5 and 1.7 by Defendant, nothing in this Consent Judgment shall be construed as an
14 admission by Defendant of any fact, issue of law, conclusion of law, violation of law, nor shall
15 compliance with this Consent Judgment constitute or be construed as an admission by
16 Defendant of any fact, issue of law, conclusion of law, or violation of law. Except for the
17 stipulations made in this Section 1.7 by Plaintiff, nothing in this Consent Judgment shall be
18 construed as an admission by Plaintiff of any fact, issue of law, or violation of law, nor shall
19 compliance with this Consent Judgment constitute or be construed as an admission by Plaintiff
20 of any fact, issue of law, conclusion of law, or violation of law.

21 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall
22 prejudice, waive or impair any right, remedy or defense any Party may have in any other or
23 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
24 responsibilities, and duties of any Party to this Consent Judgment. This Consent Judgment is a
25 full and final settlement of all claims that were raised in the Action, or which could have been
26 raised in the Action arising out of the facts or conduct alleged therein.

27

1 **2. INJUNCTIVE PROVISIONS**

2 2.1 Defendant agrees that it will only market the Products in California, as long as
3 the Products have warnings which comply with Proposition 65 on the Products' labels. This
4 injunction shall not apply to Products that Defendant puts into the stream of commerce prior to
5 the Effective Date.

6 2.2 Furthermore, Defendant agrees that it will not introduce any new products or
7 reintroduce any discontinued products into California without a Proposition 65 warning, or
8 testing of the new or discontinued products to confirm that lead is not present in the product or
9 is present at a level which is at or below the Maximum Allowable Dose Level ("MADL")
10 established for lead by the State of California Office of Environmental Health Hazard
11 Assessment.

12 **3. CIVIL PENALTIES**

13 **3.1 Stipulated Civil Penalties**

14 Defendant agrees to pay \$9,000 to As You Sow as a civil penalty, for alleged violations
15 set forth in the Complaint and the Notice of Violation.

16 **3.2 Payment to As You Sow in Lieu of Additional Penalties**

17 In lieu of any additional civil penalties, Defendant further shall pay \$30,000 to be used
18 by As You Sow for grants to California non-profit organizations and by AYS Foundation
19 Environmental Enforcement Fund. These funds shall be used to reduce exposures to toxic
20 chemicals and to increase consumer, worker and community awareness of the health hazards
21 posed by toxic chemicals in California. In deciding among the grantee proposals, the As You
22 Sow Board of Directors ("Board") shall take into consideration a number of important factors,
23 including: (1) the nexus between the alleged harm done in the underlying case, and the grant
24 program work; (2) the potential for toxics reduction, prevention, remediation or education
25 benefits to California citizens from the proposal; (3) the budget requirements of the proposed
26 grantee and the alternate funding sources available to it for its project; and (4) the Board's
27

1 assessment of the grantee's chances for success in its program work. AYS shall ensure that all
2 funds will be disbursed and used in accordance with AYS' mission statement, articles of
3 incorporation, and bylaws and applicable state and federal laws and regulations, including CCR
4 Title 11 section 3203.

5 **4. REIMBURSEMENT OF FEES AND COSTS**

6 **4.1 Reimbursement of Plaintiff's Investigative Expert and Legal Fees and Costs.**

7 Defendant shall reimburse Plaintiff in the amount of \$21,000 for Plaintiff's reasonable
8 investigative, expert, and legal fees and costs incurred as a result of investigating and
9 negotiating a settlement in the public interest. Defendant shall bear its own attorney fees and
10 costs.

11 **5. PAYMENT OBLIGATIONS**

12 **5.1** Defendant agrees to pay the total settlement amount of \$60,000, as set forth in
13 Section 3 and 4 as follows:

14 A check in the amount of \$60,000 payable to Pollock & James, LLP and As You Sow,
15 no later than fifteen (15) days after entry of the Consent Judgement. In the event the amount
16 owed by Defendant under this Consent Judgment is not remitted to counsel for As You Sow, on
17 or before its due date, Defendant shall be deemed to be in default of its obligation under this
18 Consent Judgment. Plaintiff shall provide written notice to Defendant of any default; if
19 Defendant fails to remedy the default within two (2) business days of receipt of such notice
20 Plaintiff may seek relief pursuant to section 664.6 of the California Code of Civil Procedure,
21 including attorney fees and costs.

22 **6. RELEASE OF LIABILITY**

23 **6.1 Release of Liability.** Plaintiff acting on its own behalf, and in the public interest
24 releases Defendant, its officers, directors, employees, agents, attorneys, representatives,
25 shareholders, parents, subsidiaries, affiliates, divisions, predecessors, successors, subdivisions,
26 downstream distributors, downstream retailers, downstream customers, and upstream suppliers
27

1 (including manufacturers of the products and manufacturers of the raw materials of the
2 products) (“Releasees”) from all claims for violation of Proposition 65 up through the
3 Effective Date based upon exposures to lead from the products identified in the Notice of
4 Violation and Complaint.

5 Compliance with the terms of this Consent Judgment constitutes compliance with
6 Proposition 65 with respect to exposures to lead from the Products as set forth in the Notice of
7 Violation and the Complaint.

8 **6.2 Plaintiff’s Individual Release of Claims**

9 Plaintiff, also, in its individual capacity only and not in its representative capacity,
10 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
11 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
12 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
13 unknown, suspected or unsuspected, against Defendant and its Releasees, limited to and arising
14 out of alleged or actual exposures to lead in the products identified in the Notice of Violation
15 and Complaint.

16 **6.3 Release of Liability of Plaintiff.** Defendant waives all of its rights to institute
17 any claim, or form of legal action against Plaintiff, its officers, directors, employees, agents,
18 attorneys and representatives (the “Plaintiff Releasees”) for all actions or statements made or
19 undertaken by the Plaintiff Releasees in the course of seeking enforcement of Proposition 65
20 through the Action.

21 **7. CONSENT JUDGMENT**

22 **7.1 Consent Judgment.** Upon execution of this [Proposed] Consent Judgment by all
23 Parties, Plaintiff shall promptly notice a Motion for Approval & Entry of Consent Judgment in
24 the San Francisco Superior Court pursuant to Title 11, Cal. Code of Regs. §3000, *et seq.* This
25 Motion shall be served upon all of the Parties to the Action and upon the California Attorney
26 General’s Office. In the event that the court fails to approve and order entry of the judgment,
27

1 this Consent Judgment shall become null and void upon the election of any party as to them and
2 upon written notice to all parties to the Action pursuant to the notice provisions herein. If this
3 Consent Judgment becomes null and void, Plaintiff shall refund all sums paid by Defendant
4 pursuant to Sections 3.1, 3.2 and 4.1 within fifteen (15) days of written notice to Plaintiff by
5 Defendant that a refund is due. Defendant and Plaintiff shall use best efforts to support entry of
6 this Consent Judgment in the form submitted to the Office of the Attorney General. If the
7 Attorney General objects in writing to any term in this Consent Judgment, the parties shall use
8 best efforts to resolve the concern in a timely manner and prior to the hearing on the motion to
9 approve this Consent Judgment. If the Parties cannot resolve an objection of the Attorney
10 General, then AYS and Defendant shall proceed with seeking entry of an order by the court
11 approving this Consent Judgment in the form originally submitted to the Office of the Attorney
12 General, or in such other form as the parties shall mutually agree upon after consideration of any
13 comments of the Attorney General. If the Attorney General elects to file a notice of motion with
14 the court stating that the People shall appear at the hearing for entry of this Consent Judgment so
15 as to oppose entry of the Consent Judgment, then a party may withdraw from this Consent
16 Judgment prior to the date of the hearing, with notice to all parties and the sums paid hereunder
17 shall be returned to Defendant within fifteen (15) days of the date of the notice. If the Attorney
18 General files a notice of appeal of this Consent Judgment, then a party may withdraw from this
19 Consent Judgment within forty-five (45) days of the People's notice of appeal and this Consent
20 Judgment shall be null and void ab initio five (5) days after notice of the withdrawal and any
21 sums paid hereunder shall be returned to Defendant within fifteen (15) day of the date of
22 voiding.

23 **8. ENFORCEMENT AND MODIFICATION**

24 **8.1 Enforcement.** In the event that a dispute arises
25 with respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer
26 within twenty (20) days after any Party receives written notice of an alleged violation of this
27

1 Consent Judgment from another Party. In the event the affected Parties cannot resolve the
2 dispute, this Consent Judgment may be enforced pursuant to Code of Civil Procedure § 664.6 or
3 any other valid provision of law. The prevailing party in any dispute regarding compliance with
4 the terms of this Consent Judgment shall be awarded its reasonable fees and costs incurred, in
5 addition to any other relief otherwise ordered by the court.

6 **9. GOVERNING LAW**

7 **9.1 Governing Law.** The terms of this Consent Judgment shall be governed by the
8 laws of the State of California. This Consent Judgment shall not govern Products or products
9 sold to consumers or other persons outside the State of California.

10 **10. NOTICES**

11 **10.1 Notices.** All correspondence and notices required to be provided under this
12 Agreement shall be in writing and shall be sent by first class registered or certified mail, or via a
13 reputable overnight delivery service with a tracking mechanism, addressed as follows:

14 All correspondence to Plaintiff shall be mailed to:

15 Attn: Lawrence E. Fahn, President
16 As You Sow
17 311 California Street, Suite 510
18 San Francisco, CA 94104

With a copy to:

15 Mark S. Pollock
16 Pollock & James, LLP
17 1792 Second Street
18 Napa, CA 94559

18 All correspondence to Defendants shall be mailed to:

19 Donna Shiroma
20 ASCEND Therapeutics
21 607 Herndon Parkway, Suite 110
22 Herndon, Virginia 20170

With a copy to:

19 Margaret Carew Toledo
20 Mennemeier, Glassman & Stroud LLP
21 980 9th Street, Suite 1700
22 Sacramento, CA 95814

23 **11. INTEGRATION & MODIFICATION**

24 **11.1 Integration & Modification.** This Consent Judgment, together with the Exhibits
25 hereto which are specifically incorporated herein by this reference, constitutes the entire
26 agreement between the Parties relating to the rights and obligations herein granted and assumed,
27 and supercedes all prior understandings between the Parties. Except as set forth in Section 8,
this Consent Judgment may be modified only upon the written agreement of the parties to be

1 bound. If any term of this Consent Judgment is found by the court to be invalid, then such term
2 shall be stricken and the remaining terms shall not be affected thereby. In the interpretation
3 hereof, references to general "Sections" (e.g., "Section 8") shall include all subsections within
4 said section (e.g., Sections 8.1, 8.2 and 8.3), but references to specific subsections (e.g.,
5 "Section 2.2.1") shall refer to that specific subsection.

6 **12. COUNTERPARTS**

7 **12.1 Counterparts.** This Consent Judgment may be executed in counterparts, each of
8 which shall be deemed an original, and all of which, when taken together, shall constitute one
9 and the same document.

10 **13. AUTHORIZATION**

11 **13.1 Authorization.** The undersigned are authorized to execute this Agreement on
12 behalf of their respective parties and have read, understood, and agree to all of the terms and
13 conditions of this Agreement.

14 **IT IS SO STIPULATED.**

15
16 DATED: 1/27/2012

AS YOU SOW
By: 
Lawrence E. Fahn
President

17
18
19 DATED: _____

OLYMPIAN LABS, INC.
By: _____
Jay Bua
President and CEO

20
21
22
23 **IT IS SO ORDERED.**
24 DATED: APR 19 2012

HAROLD KAHN

Judge of the Superior Court

25
26 EXHIBIT A - Notice of Proposition 65 Violations

1 bound. If any term of this Consent Judgment is found by the court to be invalid, then such term
2 shall be stricken and the remaining terms shall not be affected thereby. In the interpretation
3 hereof, references to general "Sections" (e.g., "Section 8") shall include all subsections within
4 said section (e.g., Sections 8.1, 8.2 and 8.3), but references to specific subsections (e.g.,
5 "Section 2.2.1") shall refer to that specific subsection.

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11 13.1 Authorization. The undersigned are authorized to execute this Agreement on
12 behalf of their respective parties and have read, understood, and agree to all of the terms and
13 conditions of this Agreement.

14 IT IS SO STIPULATED.

15 AS YOU SOW

16 DATED: _____

17 By: _____
Lawrence E. Fahn
President

18
19 DATED: FEB 3, 2012

20 OLYMPIAN LABS, INC.
By: Jay Bria
Jay Bria
President and CEO

21
22
23 IT IS SO ORDERED.

24 DATED: APR 19 2012

25 HAROLD KAHNE

Judge of the Superior Court

26 EXHIBIT A - Notice of Proposition 65 Violations



311 California Street, Suite 510
San Francisco, CA 94104

Phone: 415.774.2200
Fax: 415.774.2201
www.asyougrow.org

September 30, 2010

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS 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. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **OLYMPIAN LABS, INC.** ("Olympian").

Chemicals. These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by Amazon. The phrase "traditional patent medicines" above is used herein as defined by the California Department of Health Services: "herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids." The products that are the subject of this notice include but are not limited to the following:

EXHIBIT "A"

<u>Product</u>	<u>Chemical</u>
AllgerG Formula 25	lead and lead compounds
Biogra	lead and lead compounds
Cold-X10	lead and lead compounds
Gin-Zing	lead and lead compounds
Olympian Cleanse	lead and lead compounds
Olympian Energy	lead and lead compounds
Siesta	lead and lead compounds

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

Duration of violations. Each of these ongoing violations has occurred on every day for at least September 30, 2009, 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 or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Mark S. Pollock
Pollock & James, LLP
952 Jefferson Street
Napa, CA 94559
Tel: 707-257-3089 Fax: 707-257-3096

Very truly yours,



Larry Fahn
President

Enclosure

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Olympian Labs, Inc.)

I, Mark S. Pollock, 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.

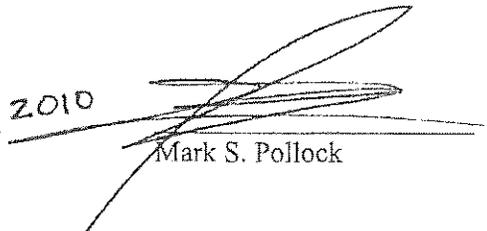
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

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 plaintiffs' 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 22, 2010


Mark S. Pollock

Attachments (for Attorney General copy only)

Westlaw

27 CCR Appendix A

Page 1

Cal. Admin. Code tit. 27, Appendix A

Barclays Official California Code of Regulations Currentness
Title 27. Environmental Protection
Division 4. Office of Environmental Health Hazard Assessment
Chapter 1. Safe Drinking Water and Toxic Enforcement Act of 1986
 Article 9. Miscellaneous
 ⇒ **Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH

HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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.

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Cal. Admin. Code tit. 27, Appendix A

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 735 chemical listings have been included as of November 16, 2001. 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 drink-

27 CCR Appendix A

Page 3

Cal. Admin. Code tit. 27, Appendix A

ing 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 25903). 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.

FOR FURTHER INFORMATION. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

27 CCR Appendix A, 27 CA ADC Appendix A

This database is current through 9/17/10 Register 2010, No. 38

END OF DOCUMENT

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On September 30, 2010, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

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

Jay Bua, President
Olympian Labs, Inc.
8445 E. Hartford Dr.
Scottsdale, AZ 85255-5579

On September 30, 2010, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

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

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612

On September 30, 2010, I served the following document(s):

- Notice of Violation of 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 at United States Postal Service mail box for delivery by First Class Mail.

Executed on September 30, 2010, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

COLUSA COUNTY DISTRICT ATTORNEY
346 FIFTH ST STE 101
COLUSA CA 95932

CONTRA COSTA COUNTY DISTRICT
ATTORNEY
900 WARD ST
MARTINEZ CA 94553

DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST STE 171
CRESCENT CITY CA 95531

EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN ST
PLACERVILLE CA 95667

FRESNO COUNTY DISTRICT ATTORNEY
2220 TULARE ST STE 1000
FRESNO CA 93721

GLENN COUNTY DISTRICT ATTORNEY
PO BOX 430
WILLOWS CA 95988

HUMBOLDT COUNTY DISTRICT ATTORNEY
825 FIFTH ST 4TH FLR
EUREKA CA 95501

IMPERIAL COUNTY DISTRICT ATTORNEY
940 W MAIN ST STE 102
EL CENTRO CA 92243

INYO COUNTY DISTRICT ATTORNEY
PO BOX D
INDEPENDENCE CA 93526

KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE
BAKERSFIELD CA 93301

KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

L A COUNTY DISTRICT ATTORNEY
210 W TEMPLE ST STE 18000
LOS ANGELES CA 90012-3210

MADERA COUNTY DISTRICT ATTORNEY
209 W YOSEMITE AVE
MADERA CA 93637

MARIN COUNTY DISTRICT ATTORNEY
3501 CIVIC CTR DR RM 130
SAN RAFAEL CA 94903

MARIPOSA COUNTY DISTRICT ATTORNEY
PO BOX 730
MARIPOSA CA 95338

MENDOCINO COUNTY DISTRICT
ATTORNEY
PO BOX 1000
UKIAH CA 95482

MERCED COUNTY DISTRICT ATTORNEY
650 W 20TH ST
MERCED CA 95340

MODOC COUNTY DISTRICT ATTORNEY
204 S COURT ST RM 202
ALTURAS CA 96101-4020

MONO COUNTY DISTRICT ATTORNEY
PO BOX 617
BRIDGEPORT CA 93517

MONTEREY COUNTY DISTRICT ATTORNEY
PO BOX 1131
SALINAS CA 93902

NAPA COUNTY DISTRICT ATTORNEY
931 PARKWAY MALL
NAPA CA 94559

NEVADA COUNTY DISTRICT ATTORNEY
110 UNION ST
NEVADA CITY CA 95959

ORANGE COUNTY DISTRICT ATTORNEY
401 CIVIC CTR DR WEST
SANTA ANA CA 92701

PLACER COUNTY DISTRICT ATTORNEY
10810 JUSTICE CENTER DR STE 240
ROSEVILLE CA 95678

PLUMAS COUNTY DISTRICT ATTORNEY
520 MAIN ST RM 404
QUINCY CA 95971

RIVERSIDE COUNTY DISTRICT ATTORNEY
3960 ORANGE ST
RIVERSIDE CA 92501

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

SACRAMENTO COUNTY DISTRICT
ATTORNEY
901 G ST
SACRAMENTO CA 95814

SAN BENITO COUNTY DISTRICT ATTORNEY
419 FOURTH ST, FL 2
HOLLISTER CA 95023

SAN BERNARDINO COUNTY DISTRICT
ATTORNEY
316 N MTN VIEW AVE
SAN BERNARDINO CA 92415-0004

SAN DIEGO COUNTY DISTRICT ATTORNEY
330 W BROADWAY
SAN DIEGO CA 92101

SAN FRANCISCO COUNTY DISTRICT
ATTORNEY
850 BRYANT ST RM 325
SAN FRANCISCO CA 94103

SAN JOAQUIN COUNTY DISTRICT
ATTORNEY
PO BOX 990
STOCKTON CA 95201-0990

SAN LUIS OBISPO COUNTY DISTRICT
ATTORNEY
COUNTY GOVERNMENT CTR, 4TH FLR
SAN LUIS OBISPO CA 93408

SAN MATEO COUNTY DISTRICT ATTORNEY
400 COUNTY CTR FL 3
REDWOOD CITY CA 94063

SANTA BARBARA COUNTY DISTRICT
ATTORNEY
1112 SANTA BARBARA ST
SANTA BARBARA CA 93101

SANTA CLARA COUNTY DISTRICT
ATTORNEY
70 W HEDDING ST WEST WING
SAN JOSE CA 95110

SANTA CRUZ COUNTY DISTRICT
ATTORNEY
701 OCEAN ST RM 200
SANTA CRUZ CA 95060

SHASTA COUNTY DISTRICT ATTORNEY
1525 COURT ST FL 3
REDDING CA 96001

SIERRA COUNTY DISTRICT ATTORNEY
PO BOX 457
DOWNEVILLE CA 95936

SISKIYOU COUNTY DISTRICT ATTORNEY
PO BOX 986
YREKA CA 96097

SOLANO COUNTY DISTRICT ATTORNEY
675 TEXAS ST STE 4500
FAIRFIELD CA 94533

SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DR RM 212-J
SANTA ROSA CA 95403

STANISLAUS COUNTY DISTRICT
ATTORNEY
832 12TH ST STE 300
MODESTO CA 95354

SUTTER COUNTY DISTRICT ATTORNEY
446 SECOND ST
YUBA CITY CA 95991

TEHAMA COUNTY DISTRICT ATTORNEY
444 OAK ST RM L
RED BLUFF CA 96080

TRINITY COUNTY DISTRICT ATTORNEY
PO BOX 310
WEAVERVILLE CA 96093

TULARE COUNTY DISTRICT ATTORNEY
221 S MOONEY BLVD RM 224
VISALIA CA 93291

TUOLUMNE COUNTY DISTRICT ATTORNEY
423 N WASHINGTON ST
SONORA CA 95370

VENTURA COUNTY DISTRICT ATTORNEY
800 S VICTORIA AVE
VENTURA CA 93009

YOLO COUNTY DISTRICT ATTORNEY
301 SECOND ST
WOODLAND CA 95695

YUBA COUNTY DISTRICT ATTORNEY
215 FIFTH ST
MARYSVILLE CA 95901

LOS ANGELES CITY ATTORNEY'S OFFICE
200 N MAIN ST 8TH FLR
LOS ANGELES CA 90012

SAN DIEGO CITY ATTORNEY'S OFFICE
CIVIC CENTER PLAZA
1200 THIRD AVE STE 1620
SAN DIEGO CA 92101

SAN JOSE CITY ATTORNEY'S OFFICE
200 E SANTA CLARA ST 16TH FLR
SAN JOSE CA 95113

SAN FRANCISCO CITY ATTORNEY'S
OFFICE
CITY HALL RM 234
1 DR CARLTON B GOODLETT PL
SAN FRANCISCO, CA 94102