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7 Attorney for Plaintiff  
8 Environmental Research Center

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16 Attorneys for Defendant  
17 Organic By Nature, Inc.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 ENVIRONMENTAL RESEARCH  
21 CENTER, a California non-profit  
22 corporation,

23 Plaintiff,

24 v.

25 ORGANIC BY NATURE, INC.;  
26 PLATINUM HEALTH PRODUCTS;  
27 PURIUM HEALTH PRODUCTS; PURE  
28 PLANET PRODUCTS, INC.; PURE  
PLANET PRODUCTS; PURE PLANET  
OASIS, LLC.; and DOES 1-50, inclusive,

Defendants.

Case No. CGC-11-516015

~~PROPOSED~~ CONSENT JUDGMENT

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 21 2014

CLERK OF THE COURT  
BY: GINA GONZALES  
Deputy Clerk

1. INTRODUCTION

1.1 On November 18, 2011, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive Relief and Civil Penalties under to the provisions of  
2 California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
3 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65"),  
4 against Defendant Organic By Nature, Inc. ("OBN").<sup>1</sup> In this action, ERC claims that certain  
5 products manufactured, distributed, and/or sold by OBN contain lead, a chemical listed under  
6 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to levels of lead  
7 requiring Proposition 65 warnings. OBN denies these allegations. ERC and OBN are  
8 hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties".

9       1.2     ERC is a California non-profit corporation dedicated to, among other causes,  
10 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
11 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
12 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling  
13 this case in the public interest.

14       1.3     OBN is a California corporation that, at all times relevant to this action, has  
15 employed ten or more persons and is a "person in the course of doing business" within the  
16 meaning of Proposition 65.

17       1.4     The Complaint is based on allegations contained in a Notice of Violations of  
18 California Health & Safety Code Section 25249.5 *et seq.* ("Notice of Violations"), which was  
19 dated December 23, 2010, and served on the California Attorney General, other public enforcers  
20 and OBN. Attached hereto as **Exhibit A** is a list of the products identified in the Notice of  
21 Violations, which are hereinafter referred to collectively as the "Covered Products" and in the  
22 singular as a "Covered Product." A true and correct copy of the Notice of Violations is attached  
23 hereto as **Exhibit B**. More than 60 days have passed since the Notice of Violations was served  
24 and no public enforcement entity has filed a complaint against OBN with regard to the Covered  
25 Products or the alleged violations.

26       1.5     ERC's Notice of Violations and the Complaint allege OBN exposed and  
27

28 <sup>1</sup> Defendants Platinum Health Products, Purium Health Products, Pure Planet Products, Inc., Pure Planet Products, and Pure Planet Oasis, LLC were dismissed prior to the Parties entering into this Consent Judgment.

1 continues to expose persons in California who use and or handle the Covered Products to the  
2 chemical lead in excess of the exposure levels allowed under Proposition 65 without OBN first  
3 providing clear and reasonable warnings, in violation of California Health and Safety Code §  
4 25249.6. OBN denies all material allegations contained in the Notice of Violations and  
5 Complaint, asserts numerous affirmative defenses to the allegations of violations, and  
6 specifically denies the Covered Products required a Proposition 65 warning or cause harm to any  
7 person.

8       1.6     The Parties have entered into this Consent Judgment in order to settle,  
9 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.

10       1.7     Nothing in this Consent Judgment, nor compliance with this Consent Judgment,  
11 shall constitute or be construed as an admission by any of the Parties of any fact, issue of law, or  
12 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be  
13 construed as giving rise to any presumption or inference of admission or concession or waiver of  
14 any defense by OBN as to any fault, wrongdoing or liability, including without limitation, any  
15 alleged violation of Proposition 65.

16       1.8     Except as expressly provided herein, nothing in this Consent Judgment shall  
17 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or  
18 future legal proceeding unrelated to these proceedings. This paragraph shall not diminish or  
19 otherwise affect the obligations, responsibilities, and duties of any Party with respect to this  
20 Consent Judgment.

21       1.9     The "Effective Date" of this Consent Judgment shall be the date this Consent  
22 Judgment is entered by the Court.

23       1.10    The only products covered by this Consent Judgment are the Covered Products.

## 24   **2.   JURISDICTION AND VENUE**

25       For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
26 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties as to  
27 the acts alleged in the Notice of Violations and Complaint, that venue is proper in this Court, and  
28 that this Court has jurisdiction to enter this Consent Judgment pursuant to the terms set forth

1 herein.

2 **3. INJUNCTIVE RELIEF**

3 3.1 On and after the Effective Date, OBN shall be permanently enjoined from  
4 manufacturing for sale in California, "Distributing into California," or directly selling to any  
5 consumer located in California any of the Covered Products (1) without complying with the  
6 warning requirement set forth in Section 3.2 below; or (2) that have a daily lead exposure level  
7 of more than 0.5 micrograms of lead per day. The term "Distributing into California," as used  
8 herein, means to ship any of the Covered Products into California for sale in California or to sell  
9 or provide any of the Covered Products to any person or entity OBN knows will ship any of the  
10 Covered Products into California for sale in California.

11 **3.2 Clear and Reasonable Warnings**

12 For Covered Products that are subject to the warning requirement of Section 3.1, OBN  
13 shall provide the following warning:

14 **WARNING:** This product contains chemicals known to the State of California to  
15 cause [cancer, and] birth defects or other reproductive harm.

16 (The text in the brackets related to cancer in the warning above shall be included only with any  
17 of the Covered Products that have a daily lead exposure level of more than 15 micrograms of  
18 lead per day.) The warning shall be permanently affixed to or prominently printed on the  
19 product label with such conspicuousness, as compared to other words, statements or designs on  
20 the label, so as to render it likely to be read and understood by the ordinary purchaser and/or user  
21 of the product under customary conditions of purchase or use of the product. The warning shall  
22 be the same size as the largest of any other health or safety warnings on the product label and the  
23 word "**WARNING**" shall be in all capital letters and in bold print.

24 **3.3 Calculation of Lead Content**

25 For purposes of Section 3.1 above and this Consent Judgment only, daily lead exposure  
26 levels shall be measured in micrograms, and shall be calculated using the following formula:  
27 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
28 product (using the largest serving size appearing on the product label), multiplied by servings of

1 the product per day (using the largest number of servings in a recommended dosage appearing on  
2 the product label) which equals micrograms of lead exposure per day.

### 3 3.4 Testing

4 3.4.1 Beginning on the Effective Date and continuing for a period of three years  
5 thereafter, at least once every three months, OBN shall have three randomly selected samples  
6 from a single lot of each Covered Product (in the form intended for sale to the end-user) tested  
7 for lead content. The term "lot," as used herein, means one manufacturing cycle. Each lot shall  
8 be designated by a numbers, letters, or a combination of numbers and letters unique to that lot,  
9 and which shall be affixed or printed on each bottle or container of any of the Covered Products  
10 in that lot. Each sample to be tested shall be randomly selected using a sound statistical  
11 sampling plan, and shall be identified in OBN's request to the laboratory for testing as being  
12 submitted pursuant to this Consent Judgment. For each Covered Product, the highest valid lead  
13 content test result of the three randomly selected and tested samples shall be used for calculating  
14 the daily lead exposure level for that Covered Product as set forth in Section 3.3 above.

15 3.4.2 Testing for lead content under Section 3.4 shall be performed using  
16 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of  
17 less than or equal to 0.010 mg/kg or any other testing method agreed upon in writing by the  
18 Parties.

19 3.4.3 Testing for lead content under Section 3.4 shall be performed by an  
20 independent third-party laboratory certified by the California Environmental Laboratory  
21 Accreditation Program for the analysis of heavy metals or an independent third-party laboratory  
22 registered with the United States Food & Drug Administration. OBN shall also retain all test  
23 results and documentation for a period of three years from the date of the test.

24 3.4.4 Beginning on the Effective Date and continuing for a period of three years  
25 thereafter, OBN shall provide copies of all laboratory reports with results of testing for lead  
26 content under Section 3.4 to ERC within ten working days after completion of that testing.  
27 These reports shall be deemed and treated by ERC as confidential information under the terms of  
28 the confidentiality agreement entered into by the Parties.

1           3.4.5 Nothing in this Consent Judgment shall limit OBN's ability to conduct, or  
2 require that others conduct, additional testing of the Covered Products, including the raw  
3 materials used in their manufacture.

4           3.4.6 The testing and sampling methodology set forth in Section 3.4 is a result  
5 of negotiation and compromise, and is accepted by the Parties for the purposes of settling,  
6 compromising, and resolving the issues in this action, including future compliance with Section  
7 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except  
8 for the purposes of determining future compliance with this Consent Judgment.

9           **3.5 Products in the Stream of Commerce**

10          The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products  
11 that OBN puts into the stream of commerce before the Effective Date. Within 10 days after the  
12 Effective Date, OBN shall provide ERC with the last lot number and expiration date for each of  
13 the Covered Products in the stream of commerce as of the Effective Date.

14       **4. SETTLEMENT PAYMENT**

15           **4.1 Total Payment**

16          In full and final satisfaction of all amounts due under the Consent Judgment, including,  
17 but not limited to, civil penalties, payment in lieu of further civil penalties, ERC's expenses and  
18 costs of litigation, and ERC's attorney fees, OBN shall pay NINETY THOUSAND DOLLARS  
19 (\$90,000) ("Total Settlement Amount") to ERC's Escrow Account. The Total Settlement  
20 Amount shall be paid by OBN in nine (9) equal monthly installments of TEN THOUSAND  
21 DOLLARS (\$10,000) each. The first monthly payment is due and shall be paid within ten (10)  
22 days after the Effective Date. ERC will give OBN the account information necessary to make  
23 the wire transfers of the installment payments. OBN shall issue a single IRS Federal Tax Form  
24 1099 for the Total Settlement Amount paid to ERC. Sections 4.2-4.5 below describe the agreed  
25 partition of the Total Settlement Amount.

26           **4.2 Civil Penalty**

27          As a portion of the Total Settlement Amount, \$14,892 shall be considered a civil penalty  
28 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$11,169)

1 of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for  
2 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California  
3 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to  
4 Defendant's counsel. ERC will retain the remaining 25% (\$3,723) of the civil penalty.

#### 5           **4.3     Payment in Lieu of Further Civil Penalties**

6           As a portion of the Total Settlement Amount, \$44,680 shall be considered a payment to  
7 ERC in lieu of further civil penalties for activities such as (1) funding the investigating,  
8 researching and testing of consumer products that may contain Proposition 65 listed chemicals;  
9 (2) funding grants to California non-profit foundations/entities dedicated to public health;  
10 (3) funding ERC's Got Lead? Program to assist consumers in testing products for lead content;  
11 (4) funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC's  
12 database of lead-free products, Proposition 65-compliant products and contaminated products;  
13 (6) funding to track and catalog Proposition 65-compliant, contamination-free sources of  
14 ingredients used in the products ERC tests; and (7) funding the continued day to day business of  
15 enforcement of Proposition 65 matters which address contaminated ingestible products, similar  
16 to the subject matter of this action; and (8) giving a donation of \$2,234.00 to the As You Sow to  
17 address reducing toxic chemical exposures in California.

#### 18           **4.4     Reimbursement of Expenses and Costs**

19           As a portion of the Total Settlement Amount, \$13,278 shall be considered a  
20 reimbursement to ERC for its reasonable costs associated with the enforcement of Proposition 65  
21 and other expenses and costs incurred as a result of preparing, bringing this matter to OBN's  
22 attention, litigating and negotiating a settlement in the public interest.

#### 23           **4.5     Attorney Fees**

24           As a portion of the Total Settlement Amount, \$17,150 shall be considered a payment to  
25 ERC for its attorneys' fees of Philip T. Emmons (\$16,137.50) and Karen A. Evans (\$1,012.50).

### 26       **5.     COSTS AND FEES**

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

1     **6.     RELEASE**

2           6.1     ERC, acting on its own behalf and in the public interest, releases OBN and its  
3     officers, directors, shareholders, employees, agents, representatives, parent companies,  
4     subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and  
5     attorneys, and suppliers, manufacturers, distributors, wholesalers, retailers and all other entities  
6     in the distribution chain of the Covered Products (collectively "Released Parties"), from all  
7     claims for violations of Proposition 65 up through the Effective Date based on exposure to lead  
8     from the Covered Products as set forth in the Notice of Violations and the Complaint.

9           6.2     Compliance with the terms of this Consent Judgment constitutes compliance with  
10    Proposition 65 with respect to consumer exposures to lead from the Covered Products as set  
11    forth in the Notice of Violations and the Complaint.

12          6.3     ERC on behalf of itself only, on the one hand, and OBN, on the other hand,  
13    release and waive all claims they may have against each other and their respective officers,  
14    directors, employees, agents, representatives and attorneys for any statements or actions made or  
15    undertaken by them or their respective officers, directors, employees, agents, representatives and  
16    attorneys in connection with the Notice of Violations or this action.

17          6.4     Nothing in this release is intended to apply to any occupational or environmental  
18    exposures arising under Proposition 65, nor shall this release apply to any of OBN's products  
19    other than the Covered Products.

20     **7.     MOTION FOR COURT APPROVAL**

21          7.1     Upon execution of this Consent Judgment by the Parties, ERC shall notice,  
22    prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California  
23    Code of Regulations § 3000, *et seq.* This motion shall be served upon OBN and upon the  
24    California Attorney General's Office. ERC shall use its best efforts to support entry of this  
25    Consent Judgment in the form submitted to the Court for approval, and OBN shall not oppose  
26    those efforts.

27          7.2     If, after service of the Motion for Approval & Entry of Consent Judgment, the  
28    California Attorney General objects in writing to any term in this Consent Judgment or files an



1 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely  
2 manner prior to the hearing on the motion. If the concern of the California Attorney General is  
3 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent  
4 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph  
5 17 below and notice to the California Attorney General's Office, and upon such notice this  
6 Consent Judgment shall be null and void.

7       7.3 This Consent Judgment shall be effective only after it has been entered by the  
8 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for  
9 any purpose.

#### 10 **8. RETENTION OF JURISDICTION**

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

#### 13 **9. MODIFICATION OF CONSENT JUDGMENT**

14 This Consent Judgment after its entry by the Court may be modified only upon written  
15 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.  
16 In the event of an agreed upon modification, each Party shall bear its own attorneys' fees and  
17 costs associated with a joint motion or application to the Court in support of the agreed upon  
18 modification of the Consent Judgment.

#### 19 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO** 20 **RESOLVE DISPUTES**

21 In the event a dispute arises with respect to any Party's compliance with the terms and/or  
22 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of  
23 another Party shall make a good faith attempt to resolve the dispute by conferring with the other  
24 Party in person, by telephone or by written communication before seeking relief from the Court.  
25 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in  
26 this Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law.  
27 The prevailing party in any such dispute brought to this Court for resolution shall be awarded all  
28 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing

1 party” means a party who is successful in obtaining relief more favorable to it than the relief the  
2 other party was agreeable to providing during the Parties’ good faith attempt to resolve the  
3 dispute that is the subject of such an enforcement proceeding.

4 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

8 **12. GOVERNING LAW**

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

11 **13. RELATION TO OTHER ACTIONS**

12 This Consent Judgment shall have no application or effect on OBN for sales of the  
13 Covered Products to consumers located outside the State of California.

14 **14. DRAFTING**

15 The terms of this Consent Judgment have been reviewed by the respective legal counsel  
16 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the  
17 terms and conditions with its legal counsel. The Parties agree that, in any subsequent  
18 interpretation or construction of this Consent Judgment, no inference, assumption or presumption  
19 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,  
20 based on the fact that one of the Parties and/or one of the Parties’ legal counsel prepared and/or  
21 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the  
22 Parties participated equally in the preparation and drafting of this Consent Judgment.

23 **15. ENTIRE AGREEMENT**

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

1 **16. EXECUTION IN COUNTERPARTS**

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

5 **17. NOTICES**

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

8 **FOR ERC:**

9 Chris Heptinstall, Executive Director  
10 Environmental Research Center  
11 3111 Camino Del Rio North, Suite 400  
12 San Diego, CA 92108

13 Philip T. Emmons  
14 Law Office of Philip T. Emmons  
15 1990 North California Blvd., 8<sup>th</sup> Floor  
16 Walnut Creek, CA 94596-3742

17 Karen A. Evans  
18 Law Office of Karen A. Evans  
19 4218 Biona Place  
20 San Diego, CA 92116

21 **FOR OBN:**

22 Amy Venner  
23 Organic By Nature, Inc.  
24 1542 Seabright Avenue  
25 Long Beach, CA 90813

26 Malcolm C. Weiss  
27 Hunton & Williams LLP  
28 550 South Hope Street, Suite 2000  
Los Angeles, CA 90071-2627

1 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

2 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is  
3 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment

1 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,  
2 and to legally bind that Party to this Consent Judgment. Each person signing this Consent  
3 Judgment on behalf of a Party represents and warrants that he or she has read and understands  
4 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on  
5 behalf of that Party.

6 **IT IS SO STIPULATED:**

7 Dated: 1/14/14

ENVIRONMENTAL RESEARCH CENTER

By: 

Chris Heptinstall  
Executive Director

12 Dated: 1-14-14

ORGANIC BY NATURE, INC.

By: 

Amy Venner  
President

19 **ORDER AND JUDGMENT**

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

22 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

23 Dated: MAY 21 2014

**ERNEST H. GOLDSMITH**

Judge of the Superior Court

## **EXHIBIT A**

**EXHIBIT A**

**COVERED PRODUCTS**

1. Organic By Nature Pure Planet Products Ginseng PLUS tablets
2. Organic By Nature Pure Planet Products Green Kamut Wheatgrass Juice Pure Juice Powder
3. Organic By Nature Pure Planet Products Bio Fruit
4. Organic By Nature Pure Planet Products Organic Best of Greens
5. Organic By Nature Pro Fiber E.F.A.
6. Platinum Health Products Joint-Flex
7. Platinum Health Products Herbal Fiber Cleanse
8. Platinum Health Products Heart-Aid
9. Platinum Health Products Immuno-Max
10. Platinum Health Products Renew Hair, Skin & Nails
11. Platinum Health Products Nutrition Now Meal Option Creamy Vanilla
12. Platinum Health Products Daily Fiber Blend
13. Purium Health Products Control
14. Purium Health Products Scoop of Greens Juicy Green Apple Flavor
15. Purium Health Products Organic Best of Greens
16. Purium Health Products More Greens
17. Pure Planet Products Inc. Red Marine Algae Plus
18. Pure Planet Products Inc. Ginseng Plus powder
19. Pure Planet Products Inc. Ginseng Plus tablets
20. Pure Planet Products Inc. Chlorella Nature's SuperGreen Food
21. Pure Planet Products Inc. 100% Hawaiian Spirulina
22. Pure Planet Products Inc. Power Carob Mint Spirulina with Ester-C 100 Tablets
23. Pure Planet Products Inc. Ginseng Chew Cinnamon
24. Pure Planet Products Inc. Carob Mint Spirulina with Ester-C 30 Tablets

## **EXHIBIT B**

LAW OFFICE OF  
**PHILIP T. EMMONS**

208 Normandy Lane  
Walnut Creek, CA 94598  
Tel: (925) 349-4029  
E-Mail: p-emmons@hotmail.com

December 23, 2010

**VIA CERTIFIED MAIL**

Current CEO or President  
Organic By Nature, Inc.  
1542 Seabright Ave  
Long Beach, CA 90813

Judy Quan  
(Organic By Nature, Inc.'s Registered Agent  
for Service of Process)  
5000 Birch Street, Suite 4400  
Newport Beach, CA 92660

Current CEO or President  
Pure Planet Products, Inc.  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Pure Planet Products  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Platinum Health Products  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Purium Health Products  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Pure Planet Oasis, LLC.  
1542 Seabright Ave  
Long Beach, CA 90813

**VIA FIRST CLASS MAIL**

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

**EXHIBIT** ***B***



Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
December 23, 2010  
Page 2

David Sandoval  
Pure Planet Oasis, LLC.'s Registered Agent  
for Service of Process)  
1542 Seabright Ave  
Long Beach, CA 90813

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

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

Dear Addressees:

I represent the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The names of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Organic By Nature, Inc.; Platinum Health Products; Purium Health Products; Pure Planet Products, Inc.; Pure Planet Products; and Pure Planet Oasis, LLC.**

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

**Organic By Nature Pure Planet Products Ginseng PLUS 100 tablets - Lead**  
**Organic By Nature Pure Planet Products Green Kamut Wheatgrass Juice Pure Juice Powder 90 Grams - Lead**  
**Organic By Nature Pure Planet Products Bio Fruit 240g - Lead**  
**Organic By Nature Pure Planet Products Organic Best of Greens 150 Grams - Lead**  
**Organic By Nature Pro Fiber E.F.A. 648 Grams - Lead**  
**Platinum Health Products Joint-Flex 180 Capsules - Lead**  
**Platinum Health Products Herbal Fiber Cleanse 180 Capsules - Lead**  
**Platinum Health Products Heart-Aid 180 Capsules - Lead**  
**Platinum Health Products Immuno-Max 180 Capsules - Lead**  
**Platinum Health Products Renew Hair, Skin & Nails 180 Capsules - Lead**  
**Platinum Health Products Nutrition Now Meal Option Creamy Vanilla 297.37 Grams - Lead**  
**Platinum Health Products Daily Fiber Blend 500 Grams - Lead**

**Purium Health Products Control 100 Capsules - Lead**  
**Purium Health Products Scoop of Greens Juicy Green Apple Flavor 111g - Lead**  
**Purium Health Products Organic Best of Greens 150 Grams - Lead**  
**Purium Health Products More Greens 240 Grams - Lead**  
**Pure Planet Products Inc. Red Marine Algae Plus 90 Capsules - Lead**  
**Pure Planet Products Inc. Ginseng Plus 226g - Lead**  
**Pure Planet Products Inc. Ginseng Plus 114g - Lead**  
**Pure Planet Products Inc. Ginseng Plus 500 Tablets - Lead**  
**Pure Planet Products Inc. Chlorella Nature's SuperGreen Food 300 Tablets - Lead**  
**Pure Planet Products Inc. 100% Hawaiian Spirulina 100 Capsules - Lead**  
**Pure Planet Products Inc. Ginseng Plus 200 Tablets - Lead**  
**Pure Planet Products Inc. Power Carob Mint Spirulina with Ester-C 100 Tablets - Lead**  
**Pure Planet Products Inc. Ginseng Chew Cinnamon 34g - Lead**  
**Pure Planet Products Inc. Carob-Mint Spirulina with Ester-C 30 Tablets - Lead**  
**Pure Planet Products Inc. Ginseng Plus 30 Tablets - Lead**

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

This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to each of the Violators.

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to the identified chemicals. Each of these ongoing violations has occurred on every day since December 23, 2010, 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.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194.  
However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip T. Emmons", written in a cursive style.

---

Philip T. Emmons, Esq.

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Organic By Nature, Inc., its Registered Agent for Service of Process; Platinum Health Products; Purium Health Products; Pure Planet Products, Inc.; Pure Planet Products; Pure Planet Oasis, LLC. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Organic By Nature, Inc.; Platinum Health Products; Purium Health Products; Pure Planet Products, Inc.; Pure Planet Products; and Pure Planet Oasis, LLC.**

I, Philip T. Emmons, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: December 23, 2010

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Philip T. Emmons

**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 December 23, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

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

Current CEO or President  
Organic By Nature, Inc.  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Platinum Health Products  
1542 Seabright Ave  
Long Beach, CA 90813

Judy Quan  
(Organic By Nature, Inc.'s Registered A  
for Service of Process)  
5000 Birch Street, Suite 4400  
Newport Beach, CA 92660

Current CEO or President  
Purium Health Products  
1542 Seabright Ave  
Long Beach, CA - 90813

Newport Beach, CA 92660  
Current CEO or President  
Pure Planet Products, Inc.  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Pure Planet Oasis, LLC.  
1542 Seabright Ave  
Long Beach, CA 90813

Current CEO or President  
Pure Planet Products  
1542 Seabright Ave  
Long Beach, CA 90813

David Sandoval  
(Pure Planet Oasis, LLC.'s  
Registered Agent for Service of Process)  
1542 Seabright Ave  
Long Beach, CA 90813

On December 23, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)**

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

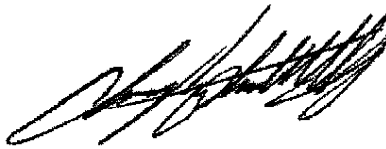
Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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On December 23, 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 First Class Mail.

Executed on December 23, 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

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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 95811

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> 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 Francisco, 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 Cir., 3<sup>rd</sup> 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 12<sup>th</sup> 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 2<sup>nd</sup> 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



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

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

### **WHAT DOES PROPOSITION 65 REQUIRE?**

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

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

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

### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt. Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

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