

1 Philip T. Emmons (SBN 124902)
2 Law Office of Philip T. Emmons
3 1990 North California Blvd., 8th Floor
4 Walnut Creek, CA 94596
5 T: (925) 287-6436
6 F: (925) 287-6437

7 Attorney for Plaintiff
8 Environmental Research Center

9 Stephen L. Marsh (SBN 115959)
10 Taylor Fleming (SBN 272947)
11 McKenna Long & Aldridge LLP
12 600 West Broadway, Suite 2600
13 San Diego, CA 92101-3372
14 T: (619) 236-1414
15 F: (619) 645-5363

16 Attorneys for Defendant
17 Healthy Body Services, LLC

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 HEALTHY BODY SERVICES INC.;
26 HEALTHY BODY SERVICES, LLC; and
27 DOES 1-50, inclusive,

28 Defendants.

ENDORSED
FILED
San Francisco County Superior Court

SEP 06 2013

CLERK OF THE COURT
BY: JACQUELINE ALAMEDA
Deputy Clerk

Case No. CGC-11-514620

~~{PROPOSED}~~ CONSENT JUDGMENT

1 INTRODUCTION

1.1 On September 26, 2011, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) pursuant to the

1 provisions of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California
2 Health and Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as
3 "Proposition 65"), against Defendant Health Body Services, LLC ("Healthy Body Services" or
4 "Defendant"). ERC and Healthy Body Services are hereinafter sometimes referred to
5 individually as a "Party" or collectively as the "Parties".

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

10 1.3 Healthy Body Services is a Nevada limited liability company. The issue of the
11 number of employees of Healthy Body Services being in dispute between the Parties, the Parties
12 agree in order to settle this action that Healthy Body Services is deemed to employ ten or more
13 persons and is a "person in the course of doing business" within the meaning of Proposition 65
14 for the purposes of this Consent Judgment only and for no other purpose, including, but not
15 limited to, any other legal matter.

16 1.4 On October 22, 2010, January 14, 2011, and January 6, 2012, pursuant to
17 California Health and Safety Code § 25249.7(d)(1), ERC served three separate Notices of
18 Violations of Proposition 65 ("Notice of Violations") on the California Attorney General, other
19 public enforcers, and Healthy Body Services. True and correct copies of the Notices of
20 Violations are attached hereto as **Exhibit A**. The Notices of Violations contain allegations that
21 Healthy Body Services, without giving a required clear and reasonable warning, have exposed
22 and continue to expose individuals in California to lead, a chemical listed under Proposition 65
23 as a carcinogen and reproductive toxin, by manufacturing, marketing, distributing and/or selling
24 the products identified in the Notices of Violations. More than 60 days have passed since the
25 service of each of the Notices of Violations, and neither the California Attorney General nor any
26 other public enforcer has filed suit against Defendants with regard to the products identified in
27 these Notices of Violations.

28 ///

1 1.5 The Complaint is based on the October 22, 2010 and January 14, 2011 Notices of
2 Violations and contains allegations that Healthy Body Services has exposed and continues to
3 expose persons in California who use and/or handle the products identified in those two Notices
4 of Violations to the chemical lead in excess of the exposure levels allowed under Proposition 65
5 without first providing clear and reasonable warnings, in violation of California Health and
6 Safety Code § 25249.6. Healthy Body Services filed an Answer to the Complaint and denies all
7 material allegations, asserts affirmative defenses to the alleged Proposition 65 violations, and
8 specifically denies that those products require Proposition 65 warnings or otherwise harm any
9 person.

10 1.6 The January 6, 2012 Notice of Violations, which identified additional products,
11 was served subsequent to the filing of the Complaint. Healthy Body Services denies all the
12 allegations made in this Notice of Violations and specifically denies that those additional
13 products require Proposition 65 warnings or otherwise harm any person. While the Complaint
14 was not amended to include this Notice of Violations, the Parties intend that this Consent
15 Judgment include and apply to the additional products identified in the January 6, 2012 Notice of
16 Violations, as well as the products identified in the October 22, 2010 and January 14, 2011
17 Notices of Violations.

18 1.7 The following seven products, which are identified in the Notices of Violations,
19 are the only products covered by this Consent Judgment:

- 20 1) Allmax Nutrition – TestoFX Hardcore,
- 21 2) Allmax Nutrition – Rapidcuts Hardcore,
- 22 3) Allmax Nutrition – Rapidcuts Hardcore Detonation Packs,
- 23 4) Allmax Nutrition – Vitastack,
- 24 5) Allmax Nutrition TribX90 Ultra Concentrated Bulgarian Species,
- 25 6) Allmax Nutrition Pro-Competition Series HydraDry 14-Day Pre-Contest
26 Water Loss System, and
- 27 7) Allmax Nutrition QuickMass.

28 These seven products are hereinafter referred to collectively as “Covered Products.”

1 1.8 The Parties enter into this Consent Judgment in order to settle disputed claims
2 between them and to avoid prolonged and costly litigation.

3 1.9 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
4 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or
5 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
6 construed as giving rise to any presumption or inference of admission or concession or waiver of
7 a defense by Healthy Body Services as to any fault, wrongdoing or liability whatsoever,
8 including, but not limited to, any alleged violation of Proposition 65.

9 1.10 Except as expressly provided herein, nothing in this Consent Judgment shall
10 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or
11 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,
12 responsibilities, and duties of any Party to this Consent Judgment.

13 1.11 The "Effective Date" of this Consent Judgment shall be 60 days after the date this
14 Consent Judgment is entered by the Court.

15 1.12 The only products covered by this Consent Judgment are the Covered Products,
16 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
17 Covered Products only.

18 **2. JURISDICTION AND VENUE**

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

23 **3. INJUNCTIVE RELIEF**

24 **3.1 Warnings**

25 On and after the Effective Date, Defendant shall be permanently enjoined from
26 manufacturing for sale in California, Distributing into California, in any way arranging for or
27 participating in the sale to any consumer located in California, or directly selling to any
28 consumer located in California any of the Covered Products without complying with either or

1 both of the warning methods set forth in Sections 3.2 and 3.3 below. The term “Distributing into
2 California” means to ship any of the Covered Products into California for sale in California or to
3 sell or provide any of the Covered Products to any person or entity Healthy Body Services knows
4 intends to or will ship any of the Covered Products into or sell the Covered Products in
5 California.

6 **3.2 Warning Method No. 1 (On-Product Warning)**

7 The following warning shall be permanently affixed to or printed on each product label:

8 **WARNING: This product contains chemicals known to the State of**
9 **California to cause cancer, and birth defects and other reproductive harm.**

10 The warning shall be prominently affixed to or printed on the product label with such
11 conspicuousness, as to render it likely to be read and understood by an ordinary individual under
12 customary conditions of purchase or use. The warning shall be at least the same size as the
13 largest of any other health or safety warnings on the product label, and the word “**WARNING**”
14 shall be in capital letters and in bold print. The warning shall be contained in the same section of
15 the product label that states other safety warnings concerning the use of the product if such other
16 safety warnings are on the product label.

17 **3.3 Warning Method No. 2 (Combination of Warning and Symbol)**

18 3.3.1 The symbol (“Symbol”) to be used as part of this warning method in
19 conjunction with a warning in the form of a sign or product insert or as part of a warning
20 appearing on a website on which any of the Covered Products are sold shall be the symbol
21 shown in **Exhibit B**, consisting of a rectangle with a white border and black background and
22 containing white “PROP 65” text.

23 3.3.2 In any use of this warning method, the Symbol shall be permanently
24 affixed or printed on each product label in a size at least as tall as the largest letter in any other
25 health or safety warning on that product label, or the product bar code, whichever is larger.

26 3.3.3 *Retail Stores in California (Combination of Warning Signs and Symbols).*
27 In any retail store located in California that offers any of the Covered Products for sale, in
28 addition to the Symbol being on each product label as described in Section 3.3.2 above, there

1 shall be displayed one or more warning signs (“Warning Signs”).

2 3.3.3.1 *Description of Warning Signs.* The Warning Signs, as shown in
3 **Exhibit C**, shall be rectangular in shape, be at least 8 ½ inches wide by 11 inches high in size
4 with margins of at least ½ inch and no more than 1 inch at all edges, have a black background,
5 and show the warning message in white letters. Larger Warning Signs shall bear substantially
6 the same proportions of type size and spacing as compared to Warning Signs with dimensions of
7 8 ½ inches by 11 inches. The warning message shall consist of the words “CALIFORNIA
8 PROPOSITION 65 WARNING” in a heading at the top of the Warning Signs in all capital
9 letters, followed by the words “Products bearing this symbol,” followed by a depiction of the
10 Symbol with dimensions of at least 3 inches wide by 3 ¼ inches high, followed by the words
11 “contain chemicals known to the State of California to cause cancer, and birth defects and other
12 reproductive harm. For more information regarding Proposition 65, visit
13 <http://www.oehha.ca.gov/prop65.html>.”

14 3.3.3.2 *Placement of Warning Signs.* The Warning Signs shall not be
15 covered or obscured; they shall be displayed in a manner rendering them likely to be read and
16 understood by an ordinary individual prior to purchase. At least one of the Warning Signs shall
17 be posted in each aisle or on each shelf or display where any of the Covered Products are offered
18 or displayed for sale, unless the retail establishment has less than 3,000 square feet of retail sales
19 space and no more than two cash registers, in which case, the retail establishment may instead
20 post one of the Warning Signs at each cash register.

21 3.3.3.3 *Information Provided to Retailers.* Healthy Body Services or its
22 designee shall provide Warning Signs to be used for posting to the central purchasing office for
23 all retailers that offer any of the Covered Products for sale in California retail stores. Each such
24 retailer shall be provided with instructions (“Warning Instruction Letter”) that shall require such
25 retailers to post the Warning Signs as described in Section 3.3.3.2 above. The Warning
26 Instruction Letter shall request such retailers to respond with a written acknowledgement that the
27 Warning Signs will be posted within 30 days as indicated in the Warning Instruction Letter. A
28 follow up communication (“Follow-Up Warning Instruction Letter”) shall be sent to such

1 retailers who were provided with a Warning Instruction Letter and did not return a timely
2 acknowledgement. The Warning Signs, Warning Instruction Letters and Follow-Up Warning
3 Instruction Letters shall be delivered in person or via a shipping method that is traceable to
4 ensure such retailers receive the information. Healthy Body Services or its designee shall
5 maintain files demonstrating compliance with this provision, including the communications
6 provided to and acknowledgments received from such retailers, which Healthy Body Services
7 shall provide to ERC upon ERC's written request. If Healthy Body Services learns that any
8 retailer offering any of the Covered Products for sale in any California retail store is failing to
9 post or maintain the Warning Signs in accordance with Section 3.3.3.2 above, Covered Products
10 shall stop being provided to that retailer, until Healthy Body Services verifies that the retailer has
11 achieved compliance in accordance with the terms of Section 3.3.3.2 above.

12 3.3.4 *Products Shipped to California Consumers (Combination of Warning*
13 *Inserts and Symbols)*. Whenever any Covered Products are shipped to California consumers as a
14 result of any of sales by Healthy Body Services, any Healthy Body Services related entity, or any
15 other company authorized by Healthy Body Services or any Healthy Body Services related entity
16 to sell any Covered Products ("Authorized Sellers"), including, but not limited to, internet and
17 mail order sales, then, in addition to the Symbol being on each product label as described in
18 Section 3.3.2 above, there shall be one or more warning inserts ("Warning Inserts") placed in
19 each shipping box containing such a shipment of any Covered Products.

20 3.3.4.1 *Description of Warning Inserts*. The Warning Inserts, as shown in
21 **Exhibit D**, shall be rectangular in shape, be at least 3 ¾ inches wide by 5 inches high in size,
22 have a black background, and show the warning message in white letters. Larger Warning
23 Inserts shall bear substantially the same proportions of type size and spacing as compared to
24 Warning Inserts with dimensions of 3 ¾ inches by 5 inches. The warning message shall consist
25 of the words "CALIFORNIA PROPOSITION 65 WARNING" in a heading at the top of the
26 Warning Signs in all capital letters, followed by the words "Products bearing this symbol,"
27 followed by a depiction of the Symbol with dimensions of at least 1 ½ inches wide and 1 ¼
28 inches high, followed by the words "contain chemicals known to the State of California to cause

1 cancer, and birth defects and other reproductive harm. If after reading this warning, you want to
2 return any product with the above symbol, please contact the retailer where you purchased the
3 item within 30 days of receipt of the product and they will arrange the product return at no cost
4 to you. For more information regarding Proposition 65, visit
5 <http://www.oehha.ca.gov/prop65.html>.”

6 *3.3.4.2 Information Provided to Authorized Sellers.* Healthy Body
7 Services or its designee shall provide Warning Inserts to Authorized Sellers to be placed in
8 shipping boxes containing any Covered Products shipped to California consumers. Health Body
9 Services or its designee shall send such Authorized Sellers instructions (“Insert Instruction
10 Letter”), which shall require Authorized Sellers to place the Warning Inserts in shipments of any
11 Covered Products to California consumers. The Insert Instruction Letter shall request
12 Authorized Sellers to respond with a written acknowledgement that the Warnings Inserts will be
13 placed in such shipments within 30 days as indicated in the Insert Instruction Letter. Healthy
14 Body Services or its designee shall send a follow up communication (“Follow-Up Insert
15 Instruction Letter”) to such Authorized Sellers who were sent an Insert Instruction Letter and did
16 not send a timely acknowledgement. The Warning Inserts, Insert Instruction Letters and Follow-
17 Up Insert Instruction Letters shall be delivered in person or via a shipping method that is
18 traceable to ensure such Authorized Sellers receive the information. Healthy Body Services shall
19 maintain files demonstrating compliance with this provision, including the communications sent
20 to and acknowledgments received from such Authorized Sellers, which Healthy Body Services
21 shall provide to ERC upon ERC’s written request. If Healthy Body Services learns that any
22 Authorized Seller that ships any of the Covered Products to California consumers is failing to
23 place Warning Inserts in such shipments, then Covered Products shall stop being provided to that
24 Authorized Seller, until Healthy Body Services verifies that that Authorized Seller has achieved
25 compliance in accordance with the instructions in the Insert Instruction Letter.

26 *3.3.5* A retailer with a store located in California that offers any of the Covered
27 Products for sale may, instead of the method described in Section 3.3.3 above, use an alternative
28 warning method in that store for the Covered Products, only if the alternative warning method

1 complies with a retail store Proposition 65 warning method set forth in the terms of another
2 Proposition 65 consent judgment between that retailer and the California Attorney General, or
3 ERC or other private Proposition 65 enforcer with the approval of the California Attorney
4 General.

5 3.4 Defendant's compliance with Sections 3.1 through 3.3 of this Consent Judgment
6 shall fully and completely satisfy Defendant's obligations under Proposition 65 to provide
7 warnings for all Covered Products with respect to the presence of lead.

8 **3.5 Products in the Stream of Commerce**

9 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products
10 that are put into the stream of commerce before the Effective Date. No later than 10 days after
11 the Effective Date, Healthy Body Services shall provide ERC with the last lot number and
12 expiration date for each of the Covered Products in the stream of commerce as of the Effective
13 Date.

14 **4. SETTLEMENT PAYMENT**

15 **4.1 Total Payment**

16 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
17 ERC's expenses and costs of litigation, and ERC's attorney fees, Healthy Body Services shall,
18 within 10 business days after the Effective Date, issue a single check in the amount of \$36,000
19 ("Total Settlement Amount"), made payable to "Environmental Research Center – ERC Escrow
20 Account", and send the check by first-class registered or certified mail, or overnight delivery,
21 directly to ERC at the following address:

22 Environmental Research Center
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108

25 Healthy Body Services shall also issue a single IRS Federal Tax Form 1099 for the above
26 payment to ERC. Sections 4.2-4.4 below describe the agreed partition of the Total Settlement
27 Amount.

28 **4.2 Civil Penalty**

As a portion of the Total Settlement Amount, \$100.00 shall be considered a civil penalty

1 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$75.00)
2 of the civil penalties to the Office of Environmental Health Hazard Assessment (“OEHHA”) for
3 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
4 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to
5 Defendant’s counsel. ERC will retain the remaining 25% (\$25.00) of the civil penalty.

6 **4.3 Reimbursement of Expenses and Costs**

7 As a portion of the Total Settlement Amount, \$8,168.75 shall be considered a
8 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of
9 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this
10 matter to the attention of Healthy Body Services, and litigating and negotiating a settlement in
11 the public interest.

12 **4.4 Attorney Fees**

13 As a portion of the Total Settlement Amount, \$27,731.25 shall be considered a
14 reimbursement to ERC for its attorney fees (\$25,500 for attorney fees of Philip T. Emmons, and
15 \$2,231.25 for attorney fees of Karen A. Evans).

16 **5. COSTS AND FEES**

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

19 **6. RELEASE**

20 6.1 ERC, acting on its own behalf and in the public interest, releases Healthy Body
21 Services, and their respective officers, directors, shareholders, employees, agents,
22 representatives, parents, subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees,
23 successors, assigns and attorneys, and suppliers, manufacturers, distributors, wholesalers,
24 retailers and all other entities in the distribution chain of the Covered Products (“Released
25 Parties”), from all claims for violations of Proposition 65 up through the Effective Date based on
26 exposure to lead from the Covered Products as set forth in the Notices of Violations and the
27 Complaint.

28 ///

1 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 with respect to exposures to lead from the Covered Products.

3 6.3 ERC on behalf of itself only, on the one hand, and Healthy Body Services, on the
4 other hand, release and waive all claims they may have against each other and their respective
5 officers, directors, employees, agents, representatives and attorneys for any statements or actions
6 made or undertaken by them or their respective officers, directors, employees, agents,
7 representatives and attorneys in connection with the Notices of Violations or this action.

8 6.4 Nothing in this release is intended to apply to any occupational or environmental
9 exposures arising under Proposition 65, nor shall it apply to any products other than the Covered
10 Products.

11 **7. MOTION FOR COURT APPROVAL**

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

18 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
19 California Attorney General objects in writing to any term in this Consent Judgment or files an
20 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
21 manner prior to the hearing on the motion. If the concern of the California Attorney General is
22 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
23 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph
24 17 below and notice to the California Attorney General's Office, and upon such notice this
25 Consent Judgment shall be null and void.

26 7.3 This Consent Judgment shall be effective only after it has been entered by the
27 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
28 any purpose.

1 **8. RETENTION OF JURISDICTION**

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

4 **9. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

20 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

24 **12. GOVERNING LAW**

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

27 **13. RELATION TO OTHER ACTIONS**

28 This Consent Judgment shall have no application or effect outside the State of California

1 or on Healthy Body Services for the Covered Products or other products distributed or sold by
2 Healthy Body Services to consumers outside the State of California.

3 **14. DRAFTING**

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

12 **15. ENTIRE AGREEMENT**

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

18 **16. EXECUTION IN COUNTERPARTS**

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

22 **17. NOTICES**

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

25 ///

26 ///

27 ///

28 ///

1 **FOR ERC:**

2 Chris Heptinstall, Executive Director
3 Environmental Research Center
4 3111 Camino Del Rio North, Suite 400
5 San Diego, CA 92108

6 Philip T. Emmons
7 Law Office of Philip T. Emmons
8 1990 North California Blvd., 8th Floor
9 Walnut Creek, CA 94596

10 Karen A. Evans
11 Law Office of Karen A. Evans
12 4218 Biona Place
13 San Diego, CA 92116

14 **FOR DEFENDANT:**

15 Michael Kichuk
16 Healthy.Body Services, LLC
17 711 S. Carson Street, Suite 4
18 Carson City, NV 89701

19 Stephen L. Marsh
20 Taylor Fleming
21 McKenna Long & Aldridge LLP
22 600 West Broadway, Suite 2600
23 San Diego, CA 92101-3372

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

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

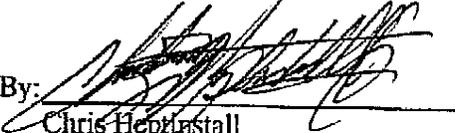
///
///
///
///

1 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
2 behalf of that Party.

3 **IT IS SO STIPULATED:**

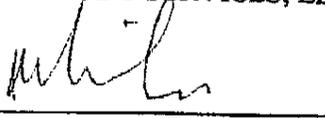
4 Dated: 5/13/2013

ENVIRONMENTAL RESEARCH CENTER

5
6 By: 
7 Chris Heppinstall
Executive Director

8
9 Dated: May 13-2013

HEALTHY BODY SERVICES, LLC

10
11 By: 
12 Michael Kichuk
13 Manager

14 **APPROVED AS TO FORM:**

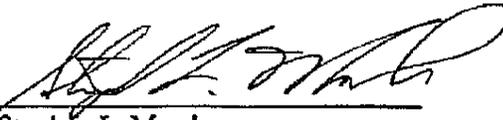
15
16 Dated: 5/13/13

LAW OFFICE OF PHILIP T. EMMONS

17
18 By: 
19 Philip T. Emmons
Attorney for Plaintiff
20 ENVIRONMENTAL RESEARCH CENTER

21
22 Dated: May 10, 2013

MCKENNA LONG & ALDRIDGE LLP

23
24 By: 
25 Stephen L. Marsh
Attorney for Defendant
26 HEALTHY BODY SERVICES, LLC

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JUDGMENT

Based on the Parties' stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.
IT IS SO ORDERED, ADJUDGED AND DECREED.

SEP 06 2013

Leslie C. Nichols

Dated: _____

Judge of the Superior Court

- EXHIBIT A – [Notices of Violations]
- EXHIBIT B – [Sample Symbol]
- EXHIBIT C – [Sample Warning Sign]
- EXHIBIT D – [Sample Warning Insert]

EXHIBIT A

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

October 22, 2010

VIA CERTIFIED MAIL

Current President or CEO
Healthy Body Services Inc.
4576 Yonge St Suite 509
North York ON M2N 6N4

Current CEO or President
Healthy Body Services, LLC
711 S Carson Street, Suite 4
Carson City, NV 89701

Resident Agents of Nevada, Inc.
(Healthy Body Services, LLC's Registered
Agent for Service of Process)
711 S. Carson Street, Suite 4
Carson City, NV 89701

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

VIA PRIORITY MAIL

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

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:

**Healthy Body Services Inc.
Healthy Body Services, LLC**

EXHIBIT A

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

Healthy Body Services Inc, Allmax Nutrition Inc - Testofx Hardcore - Lead
Healthy Body Services Inc, Allmax Nutrition Inc - Rapidcuts hardcore - Lead
Healthy Body Services Inc, Allmax Nutrition Inc - Rapidcuts hardcore detonation packs - Lead
Healthy Body Services Inc, Allmax Nutrition Inc - Vitastack (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 as chemical 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 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 these products that they are being exposed to the identified chemicals.

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. 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,



Philip T. Emmons, Esq.

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

October 22, 2010

Page 3

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Body Services Inc. and Healthy Body Services, 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 Healthy Body Services Inc. and Healthy Body Services, 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: October 22, 2010

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 October 22, 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 President or CEO
Healthy Body Services Inc.
4576 Yonge St Suite 509
North York ON M2N 6N4

Current CEO or President
Healthy Body Services, LLC
711 S Carson Street, Suite 4
Carson City, NV 89701

Resident Agents of Nevada, Inc.
(Healthy Body Services, LLC's Registered
Agent for Service of Process)
711 S. Carson Street, Suite 4
Carson City, NV 89701

On October 22, 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

On October 22, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on October 22, 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 Tuare 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 95341

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

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

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

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

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

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

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

October 22, 2010

Page 7

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

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

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

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

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

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

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

District Attorney, San Francisco County
850 Bryant Street, Room 325
San 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 Ctr., 3rd Floor
Redwood City, CA 94063

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

January 14, 2011

VIA CERTIFIED MAIL

Current President or CEO
Healthy Body Services Inc.
4576 Yonge St Suite 509
North York ON M2N 6N4

Current CEO or President
Healthy Body Services, LLC
711 S Carson Street, Suite 4
Carson City, NV 89701

Resident Agents of Nevada, Inc.
(Healthy Body Services, LLC's Registered
Agent for Service of Process)
711 S. Carson Street, Suite 4
Carson City, NV 89701

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

VIA PRIORITY MAIL

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

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:

**Healthy Body Services Inc.
Healthy Body Services, LLC**

The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**HBS International Corp. AllMax Nutrition TribX90 Ultra Concentrated Bulgarian Species
90 Capsules - 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 as chemical 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 January 14, 2011, 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.

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,



Philip T. Emmons, Esq.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
January 14, 2011
Page 3

cc: Karen Evans

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Healthy Body Services Inc. and Healthy Body Services, 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 Healthy Body Services Inc. and Healthy Body Services, 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: January 14, 2011

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 January 14, 2011, 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 President or CEO
Healthy Body Services Inc.
4576 Yonge St Suite 509
North York ON M2N 6N4

Current CEO or President
Healthy Body Services, LLC
711 S Carson Street, Suite 4
Carson City, NV 89701

Resident Agents of Nevada, Inc.
(Healthy Body Services, LLC's Registered
Agent for Service of Process)
711 S. Carson Street, Suite 4
Carson City, NV 89701

On January 14, 2011, 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

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 14, 2011, 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
Markiceville, CA 96120

District Attorney, Amador County
708 Court Street #202
Jackson, CA 95842

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

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

January 14, 2011

Page 7

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 C Street
Sacramento, CA 95811

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

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

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

District Attorney, San Francisco County
850 Bryant Street, Room 325
San 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., 3rd Floor
Redwood City, CA 94063

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

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

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

District Attorney, Shasta County
1575 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney, Sierra County
PO Box 457
Downville, 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
680 Administration Drive, Room 212J
Santa Rosa, CA 95403

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

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

District Attorney, Tehama County
Post Office Box 509
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 300
Weaverville, CA 96093

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

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

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

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

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

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

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

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

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

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.

LAW OFFICE OF
PHILIP T. EMMONS
1990 North California Blvd., 8th Floor
Walnut Creek, CA 94596-3742

Telephone: (925) 287-6436
Fax: (925) 287-6437
E-Mail: p-emmons@hotmail.com

January 6, 2012

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. 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.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 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.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served on the alleged Violators identified below.

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

**Healthy Body Services Inc.
Healthy Body Services, LLC**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

**Healthy Body Services Inc. Allmax Nutrition Pro-Competition Series HydraDry
14-Day Pre-Contest Water Loss System – Lead**

Healthy Body Services Inc. Allmax Nutrition Quick Mass Vanilla – 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.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 6, 2009, as well as every day since the products were introduced into 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 either removed from or reduced to allowable levels in the products. 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 label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that such persons are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Philip T. Emmons, Esq.

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Healthy Body Services, Inc. and Healthy Body Services, 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 Healthy Body Services, Inc. and Healthy Body Services, LLC

I, Philip T. Emmons, declare:

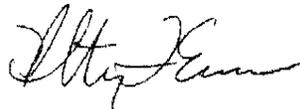
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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 chemicals that are 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 Violators 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: January 6, 2012

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 January 6, 2012, 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 President or CEO
Healthy Body Services Inc.
4576 Yonge St Suite 509
North York ON M2N 6N4

Current CEO or President
Healthy Body Services, LLC
711 S Carson Street, Suite 4
Carson City, NV 89701

Resident Agents of Nevada, Inc.
(Healthy Body Services, LLC's Registered
Agent for Service of Process)
711 S. Carson Street, Suite 4
Carson City, NV 89701

On January 6, 2012, 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

On January 6, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 6, 2012, 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
Markleville, CA 96120

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

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

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

District Attorney, Colusa County
547 Market Street
Colusa, CA 95942

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 Palare 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 93647

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

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

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

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

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

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

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

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

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

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

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

January 6, 2012

Page 6

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 C Street
Sacramento, CA 95811

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

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

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

District Attorney, San Francisco County
850 Bryant Street, Room 325
San 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., 3rd Floor
Redwood City, CA 94063

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

EXHIBIT B

PROP
65

EXHIBIT B

EXHIBIT C

CALIFORNIA PROPOSITION 65 WARNING

Products bearing this symbol



contain chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

For more information regarding Proposition 65, visit <http://www.oehha.ca.gov/prop65.html>

EXHIBIT D

CALIFORNIA PROPOSITION 65 WARNING

Products bearing this symbol:



contain chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

If after reading this warning, you want to return any product with the above symbol, please contact the retailer where you purchased the item within 30 days of receipt of the product and they will arrange the product return at no cost to you.

For more information regarding Proposition 65, visit <http://www.nehha.ca.gov/prop65.html>