

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 William F. Tarantino (SBN 215343)
10 Susan L. Landsittel (SBN 275735)
11 Morrison & Foerster LLP
12 425 Market Street
13 San Francisco, CA 94105-2482
14 T: (415) 268-7000
15 F: (415) 263-7522

16 Attorneys for Defendants
17 Vitamin Shoppe, Inc.,
18 Vitamin Shoppe Industries Inc.,
19 and Grass Advantage

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF CONTA COSTA

22 ENVIRONMENTAL RESEARCH
23 CENTER, a California non-profit
24 corporation,

25 Plaintiff,

26 v.

27 VITAMIN SHOPPE, INC.; VITAMIN
28 SHOPPE INDUSTRIES INC.; GRASS
ADVANTAGE; and DOES 1-50,
inclusive,

Defendant.

Case No. MSC12-00556

~~[PROPOSED]~~ CONSENT JUDGMENT

1. INTRODUCTION

1.1 This Action is brought by Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, under to the provisions

FILED
NOV 18 2014

STEPHEN H. NASH CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTA COSTA
By D. WAGNER, Deputy Clerk

1 of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
2 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65"),
3 against Defendants Vitamin Shoppe, Inc., Vitamin Shoppe Industries Inc. and Grass Advantage
4 ("Defendants"). ERC and Defendants are hereinafter sometimes referred to individually as a
5 "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. ERC has diligently prosecuted this matter and is settling
10 this case in the public interest.

11 1.3 Defendants are each a business entity that employs ten or more persons, and are
12 each a "person in the course of doing business" within the meaning of Proposition 65.

13 1.4 On March 16, 2012, ERC initiated this Action by filing the Complaint for
14 Injunctive Relief and Civil Penalties. On January 13, 2014, ERC filed the First Amended
15 Complaint for Injunctive Relief and Civil Penalties ("Amended Complaint"). In this Action,
16 ERC claims that certain products manufactured, distributed, and/or sold by Defendants contain
17 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
18 consumers to levels of lead requiring Proposition 65 warnings.

19 1.5 The Amended Complaint is based on allegations contained in two Notices of
20 Violations of Proposition 65 ("Notices of Violations"), which were dated March 25, 2011 and
21 May 17, 2013, and served on the California Attorney General, other public enforcers and
22 Defendants. True and correct copies of the Notices of Violations are attached hereto as
23 **Exhibit A**. The following products were identified in the Notices of Violations: (1) Amazing
24 Grass Green SuperFood Chocolate Peanut Butter Protein Bar; (2) Amazing Grass Green
25 SuperFood Whole Food Energy Bar; (3) Amazing Grass Amazing Meal Original Blend; (4)
26 Amazing Grass Green SuperFood Chocolate Drink Powder; (5) Amazing Grass Green
27 SuperFood Lemon Lime Energy Drink Powder; (6) Amazing Grass Green SuperFood Berry
28 Flavor Drink Powder; (7) Amazing Grass Green SuperFood All Natural Drink Powder;

1 (8) Amazing Grass Green SuperFood Raw Reserve; (9) Amazing Grass Amazing Meal Vanilla
2 Chai Infusion; (10) Amazing Grass Amazing Meal Chocolate Infusion; (11) Amazing Grass
3 Amazing Meal Pomegranate Mango Infusion; (12) Amazing Grass Green SuperFood Orange
4 Dreamsicle Drink Powder; (13) Amazing Grass The Amazing Trio Barley Grass Wheat Grass &
5 Alfalfa Whole Food Drink Powder; and (14) Amazing Grass Green SuperFood Whole Food
6 Energy Bar Berry. (These 14 listed products are hereinafter referred to collectively as the “Covered
7 Products” and in the singular as a “Covered Product.”) More than 60 days have passed since the
8 Notices of Violations were served and neither the California Attorney General nor any other
9 public enforcement entity has filed a lawsuit against Defendants with regard to the Covered
10 Products or the alleged violations.

11 1.6 ERC’s Notices of Violations and the Amended Complaint allege that the Covered
12 Products exposed persons in California to lead without first providing clear and reasonable
13 warnings, in violation of Cal. Health & Safety Code Section 25249.6. Defendants deny all
14 material allegations contained in the Notices of Violations and Amended Complaint, assert
15 numerous affirmative defenses to the allegations of violations, and specifically deny that the
16 Covered Products required a Proposition 65 warning or otherwise harm any person.

17 1.7 The Parties enter into this Consent Judgment to settle disputed claims between
18 them and to avoid prolonged and costly litigation.

19 1.8 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
20 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or
21 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
22 construed as giving rise to any presumption or inference of admission or concession or waiver of
23 any defense by Defendants as to any fault, wrongdoing or liability whatsoever, including, but not
24 limited to, any alleged violation of Proposition 65.

25 1.9 Except as expressly set forth herein, nothing in this Consent Judgment shall
26 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or
27 future legal proceedings unrelated to this Consent Judgment or this Action. This paragraph shall
28 not diminish or otherwise affect the obligations, responsibilities, and duties of any Party with

1 respect to this Consent Judgment.

2 1.10 The "Effective Date" of this Consent Judgment shall be the date this Consent
3 Judgment is entered by the Court.

4 1.11 The only products covered by this Consent Judgment are the Covered Products
5 sold by Defendants Vitamin Shoppe, Inc. and/or Vitamin Shoppe Industries Inc., and the only
6 chemical covered by this Consent Judgment is the chemical lead as related to the Covered
7 Products sold by Defendants Vitamin Shoppe, Inc. and/or Vitamin Shoppe Industries Inc. only.

8 **2. JURISDICTION AND VENUE**

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

14 **3. INJUNCTIVE RELIEF**

15 3.1 On and after the Effective Date, Defendants shall be permanently enjoined and
16 restrained from the Covered Products being sold by Defendants Vitamin Shoppe, Inc. and/or
17 Vitamin Shoppe Industries Inc. to any consumer located in California by any means, including,
18 but not limited to, sales through retail stores, the Internet or catalogs, without complying with
19 one or more of the warning methods set forth in Section 3.2.

20 **3.2 Clear and Reasonable Warnings**

21 For Covered Products that are subject to the warning requirement of Section 3.1,
22 Defendants shall provide the following warning ("Warning") as specified below:

23 **WARNING [California Proposition 65]:** This product contains lead, a
24 chemical known to the State of California to cause cancer and birth defects or
25 other reproductive harm.

26 (The text in the brackets in the warning above is optional.)

27 (a) For sales in retail stores, the Warning may be provided by either of the following
28 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and

1 Reasonable Warnings in Retail Stores, below:

2 (1) *Identifying Signs and Designated Symbol in Retail Stores.* In retail stores,
3 the Warning may be provided through the use of a system that combines both a designated
4 symbol and an identifying sign that explains the meaning of the designated symbol. The
5 designated symbol (“Symbol”) shall be either:

6 Symbol #1: The Symbol shown on **Exhibit B**, which shall appear as
7 shown on **Exhibit B**, with black “Prop 65” and “!” text, black border, and
8 yellow background, wherever it is displayed;

9 -or-

10 Symbol #2: The Symbol shown on **Exhibit C**, which shall appear as
11 shown on **Exhibit C**, with the words “Prop 65” placed above the word
12 “Warning!”, wherever it is displayed.

13 (A) *Covered Products Displayed in Retail Stores: Signs.*

14 (i) *Form of Sign.* A Sign shall be rectangular and at least 36
15 square inches in size, with the word “WARNING” centered one-half of an inch from the top of
16 the sign all in one-half inch capital letters. For the body of the warning message, left and right
17 margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be
18 observed. The Symbol must be at least one inch high. Larger signs shall bear substantially the
19 same proportions of type size and spacing to sign dimension as a sign that is 36 square inches in
20 size. Unless modified by agreement of the Parties, the sign shall contain the following text (text
21 in brackets is optional, except as described above):

22
23 WARNING:
24 CALIFORNIA PROPOSITION 65
25 Products with the symbol
26 *[Shown on Exhibit B or C]*
27 contain lead, a chemical known to
28 the State of California to
cause cancer and birth defects
or other reproductive harm

1 (ii) *Placement of Sign.* Signs shall be placed by the Effective Date in
2 each California establishment of Defendants Vitamin Shoppe, Inc. and/or Vitamin Shoppe
3 Industries Inc. in which any of the Covered Products are available for sale to the public. Signs
4 shall not be covered or obscured, and shall be placed and displayed in a manner rendering them
5 likely to be read and understood by an ordinary individual prior to purchase. At least one Sign
6 shall be posted in each aisle or on each shelf or display where the Covered Products for which
7 the warning is being provided are offered or displayed for sale, unless the retail establishment
8 has less than 7,500 square feet of retail space and no more than two cash registers, in which case
9 the Sign may be posted at each cash register. Additional signs shall be posted as are necessary to
10 assure that any potential purchaser of Covered Products would be likely to see a Sign prior to
11 purchase.

12 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol
13 shall be prominently displayed by the Effective Date and with such conspicuousness, as
14 compared with other words, statements, designs, or devices used at the point the Covered
15 Products are offered for sale, as to render the Symbol likely to be seen by an ordinary individual
16 prior to purchase. The Symbol shall be displayed on or adjacent to the Covered Products in any
17 one or more of the following locations:

18 (i) The Symbol may be permanently affixed to or prominently
19 printed on any placards, signs, or shelf stickers adjacent to the Covered Products that identify the
20 name or price of the Covered Products displayed, in which case the Symbol shall be no less than
21 one-quarter inch (0.25 inch) high; or

22 (ii) The Symbol may be permanently affixed to or printed on
23 (at the point of manufacture, prior to shipment to California, or prior to distribution within
24 California) the outside packaging or container of each unit of the Covered Products, in which
25 case the Symbol must be large enough that the characters in the Symbol are in a type size no
26 smaller than 6 point, and in no case shall the Symbol be less than one-quarter inch (0.25 inch)
27 high.

28 ///

1 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not
2 using the Identifying Signs and Designated Symbol in Retail Stores system described in Section
3 3.2(a)(1), the Warning shall be permanently affixed to or printed on (at the point of manufacture,
4 prior to shipment to California, or prior to distribution within California) the outside packaging
5 or container of each unit of the Covered Products. The Warning shall be displayed with such
6 conspicuousness, as compared with other words, statements, designs, or devices on the
7 packaging or labeling, as to render it likely to be read and understood by an ordinary individual
8 prior to purchase. If the Warning is displayed on the product container or labeling, the Warning
9 shall be at least the same size as the largest of any other health or safety warnings on the product
10 container or labeling, and the word “**WARNING**” shall be in all capital letters and in bold print.
11 If printed on the labeling itself, the Warning shall be contained in the same section of the
12 labeling that states other safety warnings concerning the use of the product.

13 (b) For Covered Products sold by Defendants Vitamin Shoppe, Inc. and/or Vitamin
14 Shoppe Industries Inc. to California consumers through the Internet, the Warning shall be
15 prominently displayed on each webpage describing the ingredients or attributes of a Covered
16 Product, or the Warning may be provided at the time the customer enters a California address for
17 the shipping address. In addition, for each shipment of any Covered Product resulting from such
18 a sale, the Warning shall be displayed on the outside packaging or container of each unit of the
19 Covered Product or on the invoice that accompanies the shipment of the Covered Product. In all
20 circumstances, the Warning shall be displayed with such conspicuousness, as compared with
21 other words, statements, designs, or devices on the webpages, product packaging, product
22 container, or invoice, as to render it likely to be read and understood by an ordinary individual
23 prior to purchase. The Warning shall be at least the same size as the largest of any other health
24 or safety warnings on the webpage, invoice, or product packaging, and the word “**WARNING**”
25 shall be in all capital letters and in bold print. A Warning printed on an invoice must be in a type
26 size at least as tall as the largest letter or numeral in the name or price of the Covered Product
27 printed on the invoice. The requirements of this paragraph may be modified by written
28 agreement between Defendants and ERC.

1 (c) For Covered Products sold by Defendants Vitamin Shoppe, Inc. and/or Vitamin
2 Shoppe Industries Inc. to California consumers through a printed catalog, the Warning shall be
3 prominently displayed on each catalog page describing the ingredients or attributes of a Covered
4 Product. In addition, for each shipment of any Covered Product resulting from such a sale, the
5 Warning shall be displayed on the outside packaging or container of each unit of the Covered
6 Product or on the invoice that accompanies the shipment of the Covered Product. In all
7 circumstances, the Warning shall be displayed with such conspicuousness, as compared with
8 other words, statements, designs, or devices on the catalog page, product packaging, product
9 container, or invoice, as to render it likely to be read and understood by an ordinary individual
10 prior to use. The Warning shall be at least the same size as the largest of any other health or
11 safety warnings on the catalog page, invoice, or product packaging, and the word "WARNING"
12 shall be in all capital letters and in bold print. A Warning printed on an invoice must be in a type
13 size at least as tall as the largest letter or numeral in the name or price of the Covered Product
14 printed on the invoice.

15 (d) For sales and distribution of Covered Products not described in subsections (a),
16 (b), and (c) above, the Warning shall be provided at the point of sale or distribution prior to
17 purchase by the consumer. The Warning shall be displayed with such conspicuousness, as
18 compared with other words, statements, designs, or devices, as to render it likely to be read and
19 understood by an ordinary individual prior to purchase. The Warning shall be at least the same
20 size as the largest of any other health or safety warnings presented, and the word "WARNING"
21 shall be in all capital letters and in bold print.

22 3.3 No other statements about Proposition 65 may accompany the warnings set forth
23 in Section 3.2.

24 **4. SETTLEMENT PAYMENT**

25 **4.1 Total Payment**

26 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
27 ERC's expenses and costs of investigation and litigation, and ERC's attorney fees, Defendants
28 shall, within 10 days after the Effective Date, issue a single check in the amount of \$74,750

1 (“Total Settlement Amount”), made payable to “Environmental Research Center – ERC Escrow
2 Account”, and send the check by first-class registered or certified mail, or overnight delivery,
3 directly to ERC at the following address:

4 Environmental Research Center
5 3111 Camino Del Rio North, Suite 400
6 San Diego, CA 92108

7 Defendants shall also issue a single IRS Federal Tax Form 1099 for the above payment to ERC.

8 Sections 4.2-4.5 below describe the agreed partition of the Total Settlement Amount.

9 4.2 Civil Penalty

10 As a portion of the Total Settlement Amount, \$13,212 shall be considered a civil penalty
11 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$9,909)
12 of the civil penalties to the Office of Environmental Health Hazard Assessment (“OEHHA”) for
13 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
14 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to
15 Defendants’ counsel. ERC will retain the remaining 25% (\$3,303) of the civil penalty.

16 4.3 Payment in Lieu of Further Civil Penalties

17 As a portion of the Total Settlement Amount, \$19,817.50 shall be considered a payment
18 to ERC in lieu of further civil penalties for activities such as (1) funding the investigating,
19 researching and testing of consumer products that may contain Proposition 65 listed chemicals;
20 (2) funding grants to California non-profit foundations/entities dedicated to public health;
21 (3) funding ERC’s Got Lead? Program to assist consumers in testing products for lead content;
22 (4) funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC’s
23 database of lead-free products, Proposition 65-compliant products and contaminated products;
24 (6) funding to track and catalog Proposition 65-compliant, contamination-free sources of
25 ingredients used in the products ERC tests; and (7) funding the continued day to day business of
26 enforcement of Proposition 65 matters which address contaminated ingestible products, similar
27 to the subject matter of this Action. A donation of \$990 from this portion of the payment will be
28 made by ERC to Environmental Working Group – EWG.

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1 **4.4 Reimbursement of Expenses and Costs**

2 As a portion of the Total Settlement Amount, \$16,558 shall be considered a
3 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of
4 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this
5 matter to Defendants' attention, litigating and negotiating a settlement in the public interest.

6 **4.5 Attorney Fees**

7 As a portion of the Total Settlement Amount, \$25,162.50 shall be considered a payment
8 to ERC for its attorneys' fees of Philip T. Emmons (\$24,075) and Karen A. Evans (\$1,087.50).

9 **5. COSTS AND FEES**

10 Except as expressly set forth herein in this Consent Judgment, each Party shall bear its
11 own attorneys' fees, costs and expenses in this action.

12 **6. RELEASE**

13 6.1 ERC, acting on its own behalf and in the public interest, releases Defendants, and
14 their respective officers, directors, shareholders, employees, agents, representatives, parent
15 companies, subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors,
16 assigns and attorneys, from all claims for violations of Proposition 65 up through the Effective
17 Date based on exposure to lead from the Covered Products as set forth in the Notices of
18 Violations and the Amended Complaint, but only for Covered Products sold by Defendants
19 Vitamin Shoppe, Inc. and/or Vitamin Shoppe Industries Inc.

20 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
21 Proposition 65 with respect to consumer exposures to lead from the Covered Products as set
22 forth in the Notices of Violations and the Amended Complaint, but only for Covered Products
23 sold by Defendants Vitamin Shoppe, Inc. and/or Vitamin Shoppe Industries Inc.

24 6.3 ERC on behalf of itself only, on the one hand, and Defendants, on the other hand,
25 release and waive all claims they may have against each other and their respective officers,
26 directors, employees, agents, representatives and attorneys for any statements or actions made or
27 undertaken by them or their respective officers, directors, employees, agents, representatives and
28 attorneys in connection with the Notices of Violations or this Action.

1 6.4 Nothing in this release is intended to apply to any occupational or environmental
2 exposures arising under Proposition 65, nor shall it apply to any of Defendants' products other
3 than the Covered Products sold by Defendants Vitamin Shoppe, Inc. and/or Vitamin Shoppe
4 Industries Inc.

5 **7. MOTION FOR COURT APPROVAL**

6 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
7 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
8 Code of Regulations § 3000, *et seq.* This motion shall be served upon Defendants and upon the
9 California Attorney General's Office. Defendants and ERC shall use their best efforts to support
10 entry of this Consent Judgment in the form submitted to the Court for approval.

11 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
12 California Attorney General objects in writing to any term in this Consent Judgment or files an
13 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
14 manner prior to the hearing on the motion. If the concern of the California Attorney General is
15 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
16 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph
17 17 below and notice to the California Attorney General's Office, and upon such notice this
18 Consent Judgment shall be null and void.

19 7.3 This Consent Judgment shall be effective only after it has been entered by the
20 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
21 any purpose.

22 **8. RETENTION OF JURISDICTION**

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

25 **9. MODIFICATION OF CONSENT JUDGMENT**

26 This Consent Judgment after its entry by the Court may be modified only upon written
27 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.
28 In the event of an agreed upon modification, Defendants shall reimburse ERC its attorneys' fees

1 and costs associated with a joint motion or application to the Court in support of the agreed upon
2 modification of the Consent Judgment.

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

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

16 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

20 **12. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California.

23 **13. RELATION TO OTHER ACTIONS**

24 This Consent Judgment shall have no application or effect on Defendants for sales of the
25 Covered Products to consumers outside the State of California or for sales of the Covered
26 Products to consumers in the State of California other than sales by Defendants Vitamin Shoppe,
27 Inc. and/or Vitamin Shoppe Industries Inc.

28 ///

1 **14. DRAFTING**

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

10 **15. ENTIRE AGREEMENT**

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

16 **16. EXECUTION IN COUNTERPARTS**

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

20 **17. NOTICES**

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

23
24 **FOR ERC:**

25 Chris Heptinstall, Executive Director
26 Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108

1 Philip T. Emmons
2 Law Office of Philip T. Emmons
3 1990 North California Blvd., 8th Floor
4 Walnut Creek, CA 94596-3742

5 Karen A. Evans
6 Law Office of Karen A. Evans
7 4218 Biona Place
8 San Diego, CA 92116

9 **FOR DEFENDANTS:**

10 Michael A. Jaffe
11 Associate General Counsel
12 The Vitamin Shoppe
13 2101 91st Street
14 North Bergen, NJ 07047

15 Todd Haberhmehl, CEO
16 Grass Advantage
17 220 Newport Center Drive, Suite 22
18 Newport, CA 92660

19 William F. Tarantino
20 Morrison & Foerster LLP
21 425 Market Street, 33rd Floor
22 San Francisco, CA 94105

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

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

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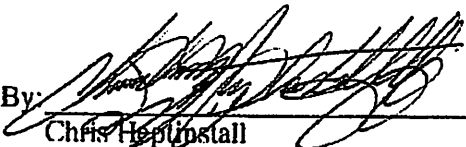
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1 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
2 behalf of that Party.

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4 **IT IS SO STIPULATED:**

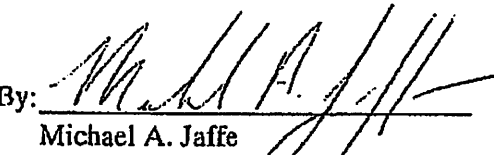
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6 Dated: 4/16/14

ENVIRONMENTAL RESEARCH CENTER

7
8 By: 
9 Chris Hopinstall
10 Executive Director


11 Dated: 4/15/14

VITAMIN SHOPPE, INC.

12
13 By: 
14 Michael A. Jaffe
15 Associate General Counsel

16
17 Dated: 4/15/14

VITAMIN SHOPPE INDUSTRIES INC.

18
19 By: 
20 Michael A. Jaffe
21 Associate General Counsel

22
23 Dated: _____

GRASS ADVANTAGE

24
25
26 By: _____
27 Todd Habermehl
28 CEO

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

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28

IT IS SO STIPULATED:

Dated: _____

ENVIRONMENTAL RESEARCH CENTER

By: _____

**Chris Heptinstall
Executive Director**

Dated: _____

VITAMIN SHOPPE, INC.

By: _____

**Michael A. Jaffe
Associate General Counsel**

Dated: _____

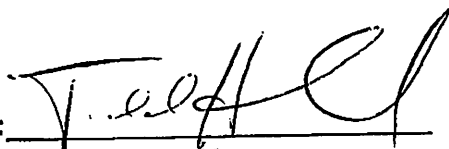
VITAMIN SHOPPE INDUSTRIES INC.

By: _____

**Michael A. Jaffe
Associate General Counsel**

Dated: 4/14/2014

GRASS ADVANTAGE


By: 

**Todd Habermehl
CEO**

1 **APPROVED AS TO FORM:**

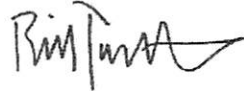
2
3 Dated: 4/16/14

LAW OFFICE OF PHILIP T. EMMONS

5
6 By: 
Philip T. Emmons
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

8
9 Dated: April 16, 2014

MORRISON & FOERSTER LLP

10
11 By: 
William F. Tarantino
Attorney for Defendants
VITAMIN SHOPPE, INC.,
VITAMIN SHOPPE INDUSTRIES INC.,
and GRASS ADVANTAGE

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17 **ORDER AND JUDGMENT**

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

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21
22 LAUREL S. BRADY

23 Dated: 11-4-14

24 _____
Judge of the Superior Court

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

March 25, 2011

VIA CERTIFIED MAIL

Current CEO or President
Vitamin Shoppe, Inc.
2101 91st Street
North Bergen, NJ 07047

Corporation Service Company
(Vitamin Shoppe, Inc.'s Registered Agent
for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

Current CEO or President
Vitamin Shoppe Industries, Inc.
2101 91st Street
North Bergen, NJ 07047

CSC – Lawyers Incorporating Service
(Vitamin Shoppe Industries, Inc.'s
Registered Agent for Service of Process)
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

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.

EXHIBIT A

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:

Vitamin Shoppe, Inc.
Vitamin Shoppe Industries, Inc.

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

Amazing Grass Green SuperFood Chocolate Peanut Butter Protein Bar 63g - Lead
Amazing Grass Green SuperFood Whole Food Energy Bar 60g - Lead
Amazing Grass Amazing Meal Original Blend 22 grams - Lead
Amazing Grass Green Superfood Chocolate Drink Powder 8 Grams - Lead
Amazing Grass Green SuperFood Lemon Lime Energy Drink Powder 7 Grams - Lead
Amazing Grass Green SuperFood Berry Flavor Drink Powder 8 Grams - Lead
Amazing Grass Green SuperFood All Natural Drink Powder 8 Grams - Lead

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

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

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to the identified chemicals. Each of these ongoing violations has occurred on every day since March 25, 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:

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 25, 2011
Page 3

(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.

cc: Karen Evans

Attachments

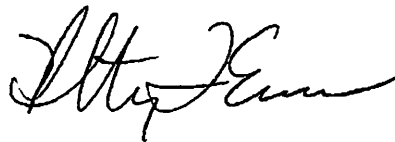
Certificate of Merit
Certificate of Service
OEHHA Summary (to Vitamin Shoppe, Inc.; its Registered Agent for Service of Process; Vitamin Shoppe Industries, Inc.; and its Registered Agent for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Vitamin Shoppe, Inc. and Vitamin Shoppe Industries, Inc.

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: March 25, 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 March 25, 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 CEO or President
Vitamin Shoppe, Inc.
2101 91st Street
North Bergen, NJ 07047

Current CEO or President
Vitamin Shoppe Industries, Inc.
2101 91st Street
North Bergen, NJ 07047

Corporation Service Company
(Vitamin Shoppe, Inc.'s Registered Agent
for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

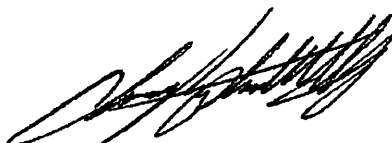
CSC – Lawyers Incorporating Service
(Vitamin Shoppe Industries, Inc.'s
Registered Agent for Service of Process)
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

On March 25, 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 March 25, 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 March 25, 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
Markleeville, CA 96120

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

March 25, 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 "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
Downieville, CA 95936

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LAW OFFICE OF
PHILIP T. EMMONS
1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596
Tel: (925) 287-6436

May 17, 2013

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

VIA CERTIFIED MAIL

Current President or CEO
Vitamin Shoppe, Inc.
2101 91st Street
North Bergen, NJ 07047

Corporation Service Company
(Vitamin Shoppe, Inc.'s Registered Agent
for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

Current President or CEO
Vitamin Shoppe Industries, Inc.
2101 91st Street
North Bergen, NJ 07047

CSC – Lawyers Incorporating Service
(Vitamin Shoppe Industries, Inc.'s Registered Agent for
Service of Process)
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

Current President or CEO
Grass Advantage
P.O. Box 475576
San Francisco, CA 94147

Brandon A. Bert
(Grass Advantage's Registered Agent for Service of Process)
2962 Fillmore St.
San Francisco, CA 94123

Current President or CEO
Amazing Grass
220 Newport Center Drive, Suite 22
Newport Beach, CA 92660

VIA PRIORITY MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, 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:

Vitamin Shoppe, Inc.
Vitamin Shoppe Industries, Inc.
Amazing Grass
Grass Advantage

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:

- **Amazing Grass Green SuperFood Chocolate Peanut Butter Protein Bar – Lead**
- **Amazing Grass Green SuperFood Whole Food Energy Bar – Lead**
- **Amazing Grass Amazing Meal Original Blend – Lead**
- **Amazing Grass Green SuperFood Chocolate Drink Powder – Lead**
- **Amazing Grass Green SuperFood Lemon Lime Energy Drink Powder – Lead**
- **Amazing Grass Green SuperFood Berry Flavor Drink Powder – Lead**
- **Amazing Grass Green SuperFood All Natural Drink Powder – Lead**
- **Amazing Grass Green Superfood Raw Reserve - Lead**
- **Amazing Grass Amazing Meal Vanilla Chai Infusion - Lead**
- **Amazing Grass Amazing Meal Chocolate Infusion – Lead**
- **Amazing Grass Amazing Meal Pomegranate Mango Infusion -Lead**
- **Amazing Grass GreenSuperFood Orange Dreamsicle Drink Powder - Lead**
- **Amazing Grass The Amazing Trio Barley Grass Wheat Grass & Alfalfa Whole Food Drink Powder – Lead**
- **Amazing Grass GreenSuperFood Whole Food Energy Bar Berry - 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.

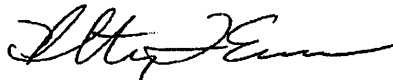
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred 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 November 30, 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 it failed to provide persons handling and/or using these products with appropriate warnings that they 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

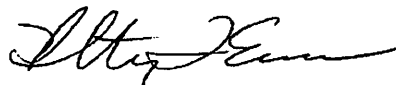
- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Vitamin Shoppe, Inc.; Vitamin Shoppe Industries, Inc.; Amazing Grass; Grass Advantage; and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

Re: Environmental Research Center's Notice of Proposition 65 Violations by Vitamin Shoppe, Inc.; Vitamin Shoppe Industries, Inc.; Amazing Grass; and Grass Advantage

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Philip T. Emmons, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultants, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: May 17, 2013

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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 17, 2013, 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 with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Vitamin Shoppe, Inc.
2101 91st Street
North Bergen, NJ 07047

Current President or CEO
Vitamin Shoppe Industries, Inc.
2101 91st Street
North Bergen, NJ 07047

Corporation Service Company
(Vitamin Shoppe, Inc.'s Registered Agent for Service of Process)
830 Bear Tavern Road
West Trenton, NJ 08628

CSC-Lawyers Incorporating Service
(Vitamin Shoppe Industries, Inc.'s Registered Agent for Service of Process)
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

Current President or CEO
Grass Advantage
P.O. Box 475576
San Francisco, CA 94147

Brandon A. Bert
(Grass Advantage's Registered Agent for Service of Process)
2962 Fillmore St.
San Francisco, CA 94123

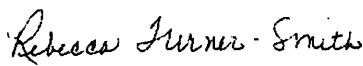
Current President or CEO
Amazing Grass
220 Newport Center Drive, Suite 22
Newport Beach, CA 92660

On May 17, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2013, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on May 17, 2013, in Fort Oglethorpe, Georgia.



Rebecca Turner-Smith

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

EXHIBIT B

EXHIBIT B: Designated Symbol #1



EXHIBIT C

EXHIBIT C: Designated Symbol #2

**PROP 65
WARNING!**