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9 Environmental Research Center

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
corporation,

Plaintiff,

vs.

ATRIUM, INC., FULL GREEN CIRCLE
CORPORATION, FULL GREEN
CIRCLE LLC, PUREFORMULAS.COM,
and DOES 1-50, Inclusive,

Defendants.

Case No.: 30-2012-00606444-CU-MC-CJC


**NOTICE OF ENTRY OF JUDGMENT
REGARDING ATRIUM INC.**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that the Court has entered Judgment and approved the Settlement between Plaintiff ENVIRONMENTAL RESEARCH CENTER and Defendant ATRIUM, INC. A true and correct copy of the Stipulated Consent Judgment and Order is attached hereto as Exhibit A.

Dated: July 23, 2014

WRAITH LAW



By: _____

WILLIAM F. WRAITH
Attorney for Plaintiff

EXHIBIT “A”

FILED
ORANGE COUNTY SUPERIOR COURT

JUL 8 2014

ALAN CARLSON, EXECUTIVE OFFICER/CLERK

BY: *[Signature]*
SILVA, DEPUTY

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8 Environmental Research Center

9 GREGORY R. OLESON, SBN 166284
10 LEWIS BRISBOIS BISGAARD & SMITH LLP
11 78-075 Main Street, Suite 203
12 La Quinta, CA 92253
13 Tel: (760) 771-6363
14 Fax: (760) 771-6373

15 Attorneys for Defendant
16 ATRIUM, INC.

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/12/2014 at 08:56:27 Pw
Clerk of the Superior Court
By Martene Diaz, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

17 ENVIRONMENTAL RESEARCH
18 CENTER, a California non-profit
19 corporation,

20 Plaintiff,

21 vs.

22 ATRIUM, INC., FULL GREEN CIRCLE
23 CORPORATION, FULL GREEN
24 CIRCLE LLC, PUREFORMULAS.COM,
25 and DOES 1-50, Inclusive,

26 Defendants.

Case No.: 30-2012-00606444-CU-MC-CJC

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT; ~~PROPOSED~~ ORDER

AS TO ATRIUM, INC.
[Health & Safety Code § 25249.5, et seq.]

C-17

1. INTRODUCTION

1.1 This Action arises out of the alleged violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. (also known as and herein after referred to as "Proposition 65") regarding the following products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a

- 1 single product):
- 2 1) Atrium Inc. atri-res
 - 3 2) Atrium Inc. garcinia cambogia plus
 - 4 3) Atrium Inc. atri-thy-kelp
 - 5 4) Atrium Inc. comfrey b&p
 - 6 5) Atrium Inc. atri-cleanse
 - 7 6) Atrium Inc. Parasit-X
 - 8 7) Atrium Inc. Chitosan HD Plus
 - 9 8) Atrium Inc. spirulina
 - 10 9) Atrium Inc. fibertime
 - 11 10) Atrium Inc. Val-Tran
 - 12 11) Atrium Inc. Atri-Nerve

13 1.2 Plaintiff Environmental Research Center, Inc. ("ERC") is a California non-profit
14 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
15 causes, helping safeguard the public from health hazards by reducing the use and misuse of
16 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
17 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
18 to California Health and Safety Code Section 25249.7.

19 1.3 Defendant ATRIUM, INC. is a Wisconsin Corporation. ATRIUM, INC. contends
20 for a portion of the time period regarding the claims asserted in the Action, ATRIUM, INC.
21 employed ten or more persons and during that period(s) was a "person in the course of doing
22 business" within the meaning of Proposition 65. At the time of the execution of this Consent
23 Judgment, ATRIUM, INC. further contends that it presently employs less than ten employees.
24 ATRIUM, INC. manufactures, distributes and sells the Covered Products.

25 1.4 ERC and ATRIUM, INC. are hereinafter sometimes referred to individually as a
26 "Party" or collectively as the "Parties."

27 1.5 On October 21, 2011, pursuant to California Health and Safety Code Section
28 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations") on

1 the California Attorney General, other public enforcers, and ATRIUM, INC. A true and correct
2 copy of the Notice of Violations is attached hereto as Exhibit A.

3 1.6 After more than sixty (60) days passed since service of the Notice of Violations,
4 and no designated governmental agency filed a complaint against ATRIUM, INC. with regard to
5 the Covered Products or the alleged violations, ERC filed the Complaint in this Action (the
6 "Complaint") for injunctive relief and civil penalties. The Complaint is based on the allegations
7 in the Notice of Violations.

8 1.7 The Complaint and the Notice of Violations each allege that ATRIUM, INC.
9 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a
10 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
11 consumers at a level requiring a Proposition 65 warning. They further allege that use of the
12 Covered Products exposes persons in California to lead without first providing clear and
13 reasonable warnings, in violation of California Health and Safety Code Section 25249.6.
14 ATRIUM, INC. denies all material allegations of the Notice of Violations and the Complaint,
15 asserts numerous affirmative defenses, and specifically denies that the Covered Products require
16 a Proposition 65 warning or otherwise cause harm to any person. By entering into this Consent
17 Judgment, ATRIUM, INC. does not admit a violation of state or federal law.

18 1.8 The Parties enter into this Consent Judgment in order to settle, compromise and
19 resolve disputed claims and avoid prolonged and costly litigation as to all claims currently
20 known by ERC regarding Proposition 65. Nothing in this Consent Judgment, nor compliance
21 with its terms, shall constitute or be construed as an admission by any of the Parties, or by any of
22 their respective officers, directors, shareholders, employees, agents, parent companies,
23 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors, wholesalers, or
24 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or
25 liability, including without limitation, any admission concerning any alleged violation of
26 Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other or future legal proceeding unrelated to these proceedings. However, nothing in this Section

1 shall affect the enforceability of this Consent Judgment.

2 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent
3 Judgment is entered by the Court.

4 1.10 The Parties enter this Consent Judgment after extensive negotiations and after
5 disclosure of financial information revealing the financial condition of ATRIUM, INC., which
6 disclosure supports the amount of the settlement and results in a settlement of this matter for
7 costs and fees only. The terms of this Consent Judgment were negotiated concurrently with
8 ASPEN GROUP, INC., which is a defendant in the matter of ERC v. ASPEN GROUP, INC.,
9 Orange County Superior Court Case Number 30-2012-00606441. ATRIUM, INC. and ASPEN
10 GROUP, INC. are related in ownership and control. Therefore, the payments required pursuant
11 to this Consent Judgment, in Section 4 are jointly and severally owed by ATRIUM, INC. and
12 ASPEN GROUP, INC.

13 **2. JURISDICTION AND VENUE**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
16 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
17 pursuant to the terms set forth herein.

18 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

19 3.1 Beginning on the Effective Date, ATRIUM, INC. shall be permanently enjoined
20 from manufacturing for sale in California, directly selling to a consumer in California or
21 "Distributing into California" any of the Covered Products for which the maximum daily dose
22 recommended on the label contains more than 0.5 micrograms of lead, unless such Covered
23 Product complies with the warning requirements in Section 3.3 or qualifies a "Reformulated
24 Covered Product" pursuant to Section 3.4. "Distributing into California" and "Distribute into
25 California" mean to directly ship any of the Covered Products into California for sale or to sell
26 any of the Covered Products to a distributor that ATRIUM, INC. knows will sell the Covered
27 Product in California.

28 3.2 Calculation of Lead Levels

1 As used in this Consent Judgment, lead levels are calculated pursuant to the testing
2 protocol described in Section 3.5. For purposes of measuring the lead, the highest lead detection
3 result of the 5 randomly selected samples of the Covered Products will be controlling.

4 **3.3 Clear and Reasonable Warnings.**

5 For those Covered Products that are subject to the warning requirement of Section 3.1,
6 ATRIUM, INC. shall provide the following warning:

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

9 The text in brackets in the warning above is optional, except that the term "cancer" must
10 be included only if the maximum daily dose recommended on the label contains more than 15
11 micrograms of lead.

12 The warning shall be prominently affixed to or printed upon the Covered Product's label
13 so as to be clearly conspicuous, as compared with other statements or designs on the label as to
14 render it likely to be read and understood by an ordinary purchaser or user of the Covered
15 Product. If the warning is displayed on the Covered Product's label, it shall be at least the same
16 size as the largest of any other health or safety warnings on the Covered Product and the word
17 "WARNING" shall be in all capital letters and in bold print.

18 For any Covered Product sold via a website, the warning shall appear on the checkout
19 page on the website for California consumers relating to any of the Covered Products being sold.

20 ATRIUM, INC. shall not provide any additional information, statements, or comments
21 regarding Proposition 65 in addition to the Warning, but ATRIUM, INC. may refer customers to
22 its company website address and provide any information separately on its website.

23 **3.4 Reformulated Covered Products.**

24 A Reformulated Covered Product is one for which the maximum recommended daily
25 serving on the label contains no more than 0.5 micrograms of lead per day.

26 **3.5 Testing and Quality Control Methodology**

27 (a) Beginning within one year of the Effective Date, ATRIUM, INC. shall test five
28 (5) randomly selected samples of each of the Covered Products (in the form intended for sale to

1 the end-user) for lead content. The testing requirement does not apply to any of the Covered
2 Products for which ATRIUM, INC. has provided the warning specified in Section 3.3.

3 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
4 Spectrometry ("ICP-MS") or any other testing method subsequently agreed to in writing by the
5 Parties.

6 (c) All testing pursuant to this Consent Judgment shall be performed by an
7 independent third party laboratory certified by the California Environmental Laboratory
8 Accreditation Program or an independent third party laboratory that is registered with the United
9 States Food & Drug Administration.

10 (d) ATRIUM, INC. shall retain all test results and documentation for a period of four
11 (4) years from the date of the test. ATRIUM, INC. shall provide copies of the test results to ERC
12 within 10 days of ATRIUM, INC.'s receipt of the test results.

13 (e) ATRIUM, INC. shall test each of the Covered Products at least once a year for a
14 minimum of four (4) consecutive years by testing five randomly selected samples of each
15 Covered Product which ATRIUM, INC. intends to sell or is manufacturing for sale in California,
16 directly selling to a consumer in California, or "Distributing into California. If tests conducted
17 pursuant to this Section demonstrate that no warning is required for a Covered Product during
18 each of four (4) consecutive years, then the testing requirements of this Section will no longer be
19 required as to that Covered Product. However, if during or after the four (4) year period,
20 ATRIUM, INC. changes ingredient suppliers for any of the Covered Products and/or
21 reformulates any of the Covered Products, ATRIUM, INC. shall test that Covered Product
22 annually for at least four (4) consecutive years after such change is made.

23 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be
24 measured in micrograms, and shall be calculated using the following formula: Micrograms of
25 lead per gram of product, multiplied by grams per serving of the product (using the largest
26 serving size appearing on the product label), multiplied by servings of the product per day (using
27 the largest number of servings in the recommended dosage appearing on the product label),
28 which equals micrograms of lead exposure per day.

1 **4. SETTLEMENT PAYMENT.**

2 4.1 ATRIUM, INC. shall make a total payment of \$37,500.00 within 10 business days
3 of the Effective Date, which shall be in full and final satisfaction of all potential civil penalties,
4 payment in lieu of civil penalties, and attorney's fees and costs. The payment will be sent to
5 counsel for ERC, William F. Wraith, Wraith Law, 16485 Laguna Canyon Road, Suite 250,
6 Irvine, California, 92618. The payment shall be issued as separate checks apportioned as follows:

7 4.2 \$14,038.66 payable to ERC as reimbursement to ERC for reasonable costs
8 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in
9 bringing this Action.

10 4.3 \$16,280.17 payable to William F. Wraith as reimbursement of ERC's attorney's
11 fees and attorney's costs.

12 4.4 \$7,181.17 payable to Karen Evans as reimbursement of ERC's attorney's fees and
13 attorney's costs.

14 4.5 Pursuant to Section 1.10, ATRIUM, INC. and ASPEN GROUP, INC. are jointly
15 and severally responsible for the full amount of the payments required in this Section. Therefore,
16 each owes the full amount, though only a total of \$37,500.00 is owed between ATRIUM, INC.
17 and ASPEN GROUP, INC.

18 **5. MODIFICATION OF CONSENT JUDGMENT**

19 This Consent Judgment may be modified only by: (i) Written agreement and stipulation
20 of the Parties and (ii) upon entry of a modified Consent Judgment by the Court. ERC is entitled
21 to reimbursement of all reasonable attorneys' fees and costs regarding any modification
22 requested or initiated by ATRIUM, INC.

23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

24 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
25 this Consent Judgment.

26 6.2 Any Party may, by motion or application for an order to show cause filed with
27 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
28 party in any such motion or application may request that the Court award its reasonable

1 attorneys' fees and costs associated with such motion or application.

2 **7. APPLICATION OF CONSENT JUDGMENT**

3 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
4 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
5 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
6 wholesalers, retailers, predecessors, successors, and assigns.

7 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

8 **8.1** ERC acting on its own behalf and in the public interest releases ATRIUM, INC.
9 and its directors, officers, shareholders and affiliates, including Nutri-Pak, (excluding private
10 label customers) from all claims for violations of Proposition 65 up through the Effective Date
11 based on exposure to lead from the Covered Products as set forth in the Notice of Violations.
12 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance
13 with respect to exposures to lead from the Covered Products as set forth in the Notice of
14 Violations and Complaint.

15 **8.2 Unknown Claims**

16 It is possible that other claims not now known to the Parties arising out of the facts
17 alleged in the Notice of Violations or the Complaint and relating to lead in the Covered Products
18 that were manufactured before the Effective Date will develop or be discovered. ERC, on behalf
19 of itself only, waives California Civil Code Section 1542 as to any such unknown claims.
20 California Civil Code Section 1542 reads as follows:

21 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
22 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
23 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
24 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
25 **SETTLEMENT WITH THE DEBTOR."**

26 **8.3** ERC, on one hand, and ATRIUM, INC., on the other hand, each release and
27 waive all claims they may have against each other and their respective officers, directors,
28 employees, agents, representatives, and attorneys for any statements or actions made or

1 undertaken by them or their respective officers, directors, employees, agents, representatives, and
2 attorneys in connection with the Notice of Violations or this Action.

3 **9. CONSTRUCTION AND SEVERABILITY**

4 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
5 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
6 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
7 construction of this Consent Judgment, the terms and conditions shall not be construed against
8 any Party.

9 9.2 In the event that any of the provisions of this Consent Judgment is held by a court
10 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
11 affected.

12 9.3 The terms and conditions of this Consent Judgment shall be governed by and
13 construed in accordance with the laws of the State of California.

14 **10. PROVISION OF NOTICE**

15 All notices required to be given to either Party to this Consent Judgment by the other
16 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)
17 certified mail, (b) overnight courier, or (c) personal delivery to the following

18 **For ENVIRONMENTAL RESEARCH CENTER**
19 Chris Heptinstall, Executive Director
20 Environmental Research Center
21 3111 Camino Del Rio North, Suite 400
22 San Diego, CA 92108

21 William F. Wraith, Esq.
22 Wraith Law
23 6485 Laguna Canyon Road, Suite 250
24 Irvine, CA 92618

25 **For ATRIUM, INC.**
26 Gregory R. Oleson, Esq.
27 Lewis Brisbois Bisgaard & Smith LLP
28 8-075 Main Street, Suite 203
La Quinta, CA 92253

1 Atrium, Inc.
2 Attn: Ashley Butler
3 P.O. Box 469
4 Green Lake, WI 54941

4 **11. COURT APPROVAL**

5 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
6 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
7 Consent Judgment.

8 **11.2** If the California Attorney General objects to any term in this Consent Judgment,
9 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
10 prior to the hearing on the motion.

11 **11.3** If this Stipulated Consent Judgment is not approved by the Court despite the
12 Parties' best efforts, it shall be null and void and have no force or effect.

13 **12. EXECUTION AND COUNTERPARTS**

14 This Stipulated Consent Judgment may be executed in counterparts, which taken together
15 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as
16 the original signature.

17 **13. ENTIRE AGREEMENT, AUTHORIZATION**

18 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any Party.
22 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
23 exist or to bind any Party.

24 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
26 provided herein, each Party shall bear its own fees and costs.

27 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

28 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.

1 The Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

3 (a) Find that the terms and provisions of this Consent Judgment represent a good
4 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
5 diligently prosecuted, and that the public interest is served by such settlement; and

6 (b) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

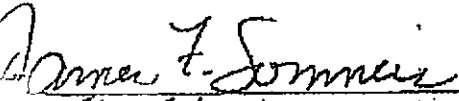
8 IT IS SO STIPULATED:

9 ENVIRONMENTAL RESEARCH CENTER

10 
11 _____
12 Chris Hepinstall, Executive Director

Dated: 10/23/2013

13
14 ATRIUM, INC.

15 
16 _____
17 James F. Sommer
18 President

Dated: 10-23-2013


18 APPROVED AS TO FORM:

19
20 WRAITH LAW

21 
22 _____
23 William F. Wraith
24 Counsel for Environmental Research Center

Dated: 10/23/2013

25 LEWIS BRISBOIS BISGAARD & SMITH LLP

26 
27 _____
28 Gregory P. Clason
Attorneys for Defendant, Atrium, Inc.

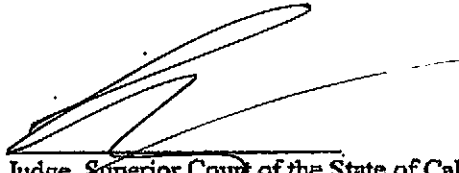
Dated: 10-23-13

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ORDER AND JUDGMENT

Based upon 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.

Dated: 7/8/14



Judge, Superior Court of the State of California
CRAIG L. GRIFFIN

EXHIBIT "A"

LAW OFFICE OF
KAREN A. EVANS
4218 Biona Place
San Diego, CA 92116
Tel: (619) 640-8100
E-Mail: karen.erc@cox.net

October 21, 2011

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 5694 Mission Center Road #199, San Diego, CA 92108. 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 Violator 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 Violator 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 to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter "the Violator") is:

Atrium, Inc.

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:

Atrium Inc. atri-res - Lead
Atrium Inc. garcinia cambogia plus - Lead
Atrium Inc. atri-thy-kelp - Lead

Atrium Inc. comfrey b&p - Lead
Atrium Inc. atri-cleanse - Lead
Atrium Inc. Parasit-X - Lead
Atrium Inc. Chitosan HD Plus - Lead
Atrium Inc. spirulina - Lead
Atrium Inc. fibertime - Lead
Atrium Inc. Val-Tran - Lead
Atrium Inc. Atri-Nerve - 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 October 21, 2008, 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 Violator 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 Violator (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.

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

October 11, 2011

Page 3

CCC 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,



Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

CHHA Summary (to Atrium, 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 Atrium, Inc.

I, Karen A. Evans, 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 chemical 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

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 identities of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other information reviewed by those persons.

Karen A. Evans

Dated: October 21, 2011

Karen A. Evans

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 21, 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:

Aspen Group, Inc.
P.O. Box 123 South Street
Delavan, WI 53191

Frank Flettenberger, Esq.
Registered Agent of Aspen Group, Inc.
125 N. 2nd Street
P.O.Box 406
Delavan, WI 53191

Aspen Group, Inc.
P.O. Box 47
Delavan, WI 53191

Steven R. Sorenson, Esq.
Registered Agent of Aspen Group, Inc.
620 E Fond Du Lac Street
P.O.Box 311
Ripon, WI 54971-0000

Aspen Group, Inc.
P.O. Box 311
Ripon, WI 54982

Aspen Group, Inc.
P.O. Box 311
Ripon, WI 54982

On October 21, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL 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
Environmental Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On October 21, 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 following list by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the list attached hereto, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

I did so on October 21, 2011, in Fort Oglethorpe, Georgia.


Chris Heptinstall

Service List

District Attorney, Alameda County 1000 Court Street, Room 900 Alameda, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230
District Attorney, Alpine County Box 248 Grass Valley, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453
District Attorney, Amador County 100 Court Street, #202 Amador, CA 95712	District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130
District Attorney, Butte County County Center Drive Weaverville, CA 96095	District Attorney, Los Angeles County 210 West Temple Street, Rm 345 Los Angeles, CA 90012
District Attorney, Calaveras County Mountain Ranch Road Calaveras, CA 95719	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637
District Attorney, Colusa County 1000 Court Street Colusa, CA 95926	District Attorney, Marin County 3501 Civic Center, Room 130 San Rafael, CA 94903
District Attorney, Contra Costa County 1000 Court Street Contra Costa, CA 94583	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338
District Attorney, El Norte County 1000 Court Street El Norte, CA 95926	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482
District Attorney, El Dorado County 1000 Court Street El Dorado, CA 95762	District Attorney, Merced County 2222 M Street Merced, CA 95340
District Attorney, Fresno County 204 S Court Street, Room 202 Alturas, CA 93701	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020
District Attorney, Glenn County 1000 Court Street Glenn, CA 96040	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517
District Attorney, Humboldt County 1000 Court Street Humboldt, CA 95926	District Attorney, Monterey County 230 Church Street, Bldg 2 Salinas, CA 93901
District Attorney, Inyo County 1000 Court Street Inyo, CA 93701	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559
District Attorney, Kern County 1000 Court Street Kern, CA 93501	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959
District Attorney, Orange County 1000 Court Street Orange, CA 92667	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.*

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Roseville, CA 95678

District Attorney, Plumas County
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Escondido, CA 92501

District Attorney, Sacramento County
900 J Street
Sacramento, CA 95811

District Attorney, San Benito County
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Fresno, CA 95023

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300 Mountain View Avenue
San Bernardino, CA 92415-0004

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San Jose, CA 95128

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