

1 WILLIAM F. WRAITH, SBN 185927
2 WRAITH LAW
3 16485 Laguna Canyon Rd., Suite 250
4 Irvine, California 92618
5 Tel: (949) 251-9977
6 Fax: (949) 251-9978

7 Attorneys for Plaintiff
8 Environmental Research Center

9 MARK O. VAN WAGONER (SBN 79688)
10 SAVAGE, YEATES & WALDRON, P.C.
11 170 South Main Street, Suite 500
12 Salt Lake City, Utah 84101

13 Attorneys for Defendants

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 19 2013
ALAN CARLSON, Clerk of the Court



14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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

19 Plaintiffs,

20 vs.

21 FOREVERGREEN WORLDWIDE
22 CORPORATION, FOREVERGREEN
23 INTERNATIONAL, LLC,
24 FOREVERGREEN IP, LLC and DOES 1-
25 25, Inclusive,

26 Defendants.

Case No.: 30-2012-00576544-CU-MC-CJC

Judge: Hon. Franz. E. Miller

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

[Health & Safety Code § 25249.5, *et seq.*]

Action Filed: June 13, 2012

Trial Date: July 22, 2013

27 1. INTRODUCTION

28 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) ForeverGreen O3 World FIXX Meal Replacement Shake
- 3 2) ForeverGreen International SmartFood Thunder 24 Karat Chocolate Meal
- 4 Replacement Shake
- 5 3) ForeverGreen International LLC LegaSea Azul 40
- 6 4) Forevergreen International Smartfood Pulse-8

7 **1.2** Plaintiff Environmental Research Center, Inc. ("ERC") is a California non-profit
8 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
9 causes, helping safeguard the public from health hazards by reducing the use and misuse of
10 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
11 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
12 to California Health and Safety Code Section 25249.7.

13 **1.3** Defendant Forevergreen Worldwide Corporation is a Nevada Corporation that is a
14 person within the meaning of H&S Code §25249.11(a). Defendant Forevergreen International,
15 LLC is a Utah Limited Liability Company that is a person within the meaning of H&S Code
16 §25249.11(a). Defendant Forevergreen IP, LLC is a Utah Limited Liability Company that is a
17 person within the meaning of H&S Code §25249.11(a). At all material times, Defendants
18 Forevergreen Worldwide Corporation, Forevergreen International, LLC and Forevergreen IP,
19 LLC were under the same ownership, dominion and control and as such were the agents,
20 servants, and employees of each other, and acted in the course and scope of the authority granted
21 each other. Defendants Forevergreen Worldwide Corporation, Forevergreen International, LLC
22 and Forevergreen IP, LLC are collectively referred to herein as ("FOREVERGREEN").
23 FOREVERGREEN manufactures, distributes and sells the Covered Products.

24 **1.4** ERC and FOREVERGREEN are hereinafter sometimes referred to individually as
25 a "Party" or collectively as the "Parties."

26 **1.5** On December 19, 2011, pursuant to California Health and Safety Code Section
27 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations") on
28 the California Attorney General, other public enforcers, and FOREVERGREEN. A true and

1 correct copy of the Notice of Violations is attached hereto as Exhibit A.

2 **1.6** After more than sixty (60) days passed since service of the Notice of Violations,
3 and no designated governmental agency filed a complaint against FOREVERGREEN with
4 regard to the Covered Products or the alleged violations, ERC filed the Complaint in this Action
5 (the "Complaint") for injunctive relief and civil penalties. The Complaint is based on the
6 allegations in the Notice of Violations.

7 **1.7** The Complaint and the Notice of Violations each allege that FOREVERGREEN
8 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a
9 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
10 consumers at a level requiring a Proposition 65 warning. Further, the Complaint and Notice of
11 Violations allege that use of the Covered Products exposes persons in California to lead without
12 first providing clear and reasonable warnings, in violation of California Health and Safety Code
13 Section 25249.6. FOREVERGREEN denies all material allegations of the Notices of Violation
14 and the Complaint, asserts numerous affirmative defenses, and specifically denies that the
15 Covered Products require a Proposition 65 warning or otherwise cause harm to any person.

16 **1.8** The Parties enter into this Consent Judgment in order to settle, compromise and
17 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
18 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
19 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
20 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
21 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
22 wrongdoing, or liability, including without limitation, any admission concerning any alleged
23 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent
24 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
25 may have in any other or future legal proceeding unrelated to these proceedings. However,
26 nothing in this Section shall affect the enforceability of this Consent Judgment.

27 **1.9** The "Effective Date" of this Consent Judgment shall be the date this Consent
28 Judgment is entered by the Court.

1 **2. JURISDICTION AND VENUE**

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

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

7 **3.1** Beginning on the Effective Date, FOREVERGREEN shall be permanently
8 enjoined from manufacturing for sale in California, directly selling to a consumer in California
9 or "Distributing into California" any of the Covered Products for which the maximum daily dose
10 recommended on the label contains more than 0.5 micrograms of lead, unless such Covered
11 Product complies with the warning requirements in Section 3.3 or qualifies a "Reformulated
12 Covered Product" pursuant to Section 3.4. "Distributing into California" means to directly ship
13 any of the Covered Products into California for sale or to sell any of the Covered Products to a
14 distributor that FOREVERGREEN knows or has reason to know will sell the Covered Product in
15 California.

16 **3.2 Calculation of Lead Levels**

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

20 **3.3 Clear and Reasonable Warnings**

21 For those Covered Products that are subject to the warning requirement of Section 3.1,
22 FOREVERGREEN shall provide the following warning:

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

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

1 The warning shall be prominently affixed to or printed upon the label of the Covered
2 Product so as to be clearly conspicuous, as compared with other statements or designs on the
3 label as to render it likely to be read and understood by an ordinary purchaser or user of the
4 product. If the warning is displayed on the product's label, it shall be at least the same size as the
5 largest of any other health or safety warnings on the product and the word "WARNING" shall
6 be in all capital letters and in bold print and, if used, the words "California Proposition 65" shall
7 be in bold print.

8 For any products sold via a website, the warning shall appear on FOREVERGREEN's
9 checkout page on its website for California consumers relating to any of the Covered Products
10 being sold.

11 FOREVERGREEN shall not provide any additional information, statements, or
12 comments regarding Proposition 65 in addition to the warning.

13 **3.4 Reformulated Covered Products.**

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

16 **3.5 Testing and Quality Control Methodology**

17 (a) Beginning within one year of the Effective Date, FOREVERGREEN shall test
18 five (5) randomly selected samples of each of the Covered Products (in the form intended for
19 sale to the end-user) for lead content. The testing requirement does not apply to any of the
20 Covered Products for which FOREVERGREEN has provided the warning specified in Section
21 3.3.

22 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
23 Spectrometry ("ICP-MS") and closed-vessel, microwave-assisted digestion employing high-
24 purity reagents or any other testing method subsequently agreed to in writing by the Parties.

25 (c) All testing pursuant to this Consent Judgment shall be performed by a laboratory
26 certified by the California Environmental Laboratory Accreditation Program or a laboratory that
27 is registered with the United States Food & Drug Administration for the analysis of heavy
28 metals.

1 (d) FOREVERGREEN shall retain all test results and documentation for a period of
2 four (4) years from the date of the test. FOREVERGREEN shall provide copies of the test results
3 to ERC within 10 days of FOREVERGREEN's receipt of the test results.

4 (e) FOREVERGREEN shall test each of the Covered Products at least once a year for
5 a minimum of four (4) consecutive years by testing five randomly selected samples of each
6 Covered Product which FOREVERGREEN intends to sell or is manufacturing for sale in
7 California, directly selling to a consumer in California, or Distributing into California. If tests
8 conducted pursuant to this Section demonstrate that no warning is required for a Covered
9 Product during each of four (4) consecutive years, then the testing requirements of this Section
10 will no longer be required as to that Covered Product. However, if during or after the four (4)
11 year period, FOREVERGREEN changes ingredient suppliers for any of the Covered Products
12 and/or reformulates any of the Covered Products, FOREVERGREEN shall test that Covered
13 Product annually for at least four (4) consecutive years after such change is made.

14 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be
15 measured in micrograms, and shall be calculated using the following formula: Micrograms of
16 lead per gram of product, multiplied by grams per serving of the product (using the largest
17 serving size appearing on the product label), multiplied by servings of the product per day (using
18 the largest number of servings in the recommended dosage appearing on the product label),
19 which equals micrograms of lead exposure per day.

20 4. SETTLEMENT PAYMENT

21 4.1 FOREVERGREEN shall make a total payment of \$75,000.00 in two installments
22 as set forth in Section 4.2 below, which when paid in full shall be in full and final satisfaction of
23 all potential civil penalties, payment in lieu of civil penalties, and attorney's fees and costs. The
24 payments will made by check payable to the "Wraith Law Client Trust Account" and will be sent
25 to counsel for ERC, William F. Wraith, Wraith Law, 16485 Laguna Canyon Road, Suite 250,
26 Irvine, California, 92618.

27 4.2 The two installments, set forth below, shall be made by the "Due Date," which
28 means the date the installment must be received in the office of ERC's counsel:

Installment	Amount	Due Date
Number 1	\$50,000.00	30 days after Court's approval of Consent Judgment
Number 2	\$25,000.00	60 days after Installment Number 1 is due

4.3 The total payment shall be apportioned as follows, and it is up to ERC's discretion how to allocate any individual installment:

4.4 \$10,916.00 as civil penalties pursuant to California Health and Safety Code Section 25249.7(b)(1). Of this amount, \$8,187.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA"), and \$2,729.00 shall be payable to ERC. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil penalty to OEHHA.

4.5 \$16,000.00 payable to ERC as reimbursement to ERC for reasonable costs associated with the enforcement of Proposition 65 and other costs incurred as a result of work in bringing this Action.

4.6 \$32,754.00 payable to ERC in lieu of further civil penalties, for the day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject matter of the current Action; (2) the continued monitoring of past consent judgments and settlements to ensure companies are complying with Proposition 65; and (3) giving a donation of \$1,638.00 to As You Sow to address reducing toxic chemical exposures in California.

4.7 \$15,330.00 payable to William F. Wraith as reimbursement of ERC's attorney's fees and attorney's costs.

5. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only by: (i) Written agreement and stipulation of the Parties or (ii) Upon entry of a modified Consent Judgment by the Court. ERC is entitled to

1 reimbursement all reasonable attorneys' fees and costs regarding any modification requested or
2 initiated by FOREVERGREEN.

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

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
5 this Consent Judgment.

6 **6.2** Any Party may, by motion or application for an order to show cause filed with
7 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
8 party in any such motion or application may request that the Court award its reasonable
9 attorneys' fees and costs associated with such motion or application.

10 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
17 behalf of itself and in the public interest, and FOREVERGREEN, of any alleged violation of
18 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
19 exposure to lead from the handling, use, or consumption of the Covered Products and fully
20 resolves all claims that have been or could have been asserted in this action up to and including
21 the date of entry of Judgment for failure to provide Proposition 65 warnings for the Covered
22 Products regarding lead. ERC, on behalf of itself and in the public interest, hereby discharges
23 FOREVERGREEN and its respective officers, directors, shareholders, employees, agents, parent
24 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not
25 including private label customers of FOREVERGREEN), distributors, wholesalers, retailers, and
26 all other upstream and downstream entities in the distribution chain of any Covered Product, and
27 the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from
28 all claims for violations of Proposition 65 up through the Effective Date based on exposure to

1 lead from the Covered Products as set forth in the Notice of Violations and the Complaint.

2 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released Parties
3 from all known and unknown claims for alleged violations of Proposition 65, or for any other
4 statutory or common law claims arising from or relating to alleged exposures to lead in the
5 Covered Products as set forth in the Notice of Violations and the Complaint.

6 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to
8 lead in the Covered Products.

9 **8.4 Unknown Claims**

10 It is possible that other claims not known to the Parties arising out of the facts alleged in
11 the Notice of Violations or the Complaint and relating to lead in the Covered Products that were
12 manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself
13 only, acknowledges that this Consent Judgment acknowledges the claims released herein may
14 include unknown claims, and nevertheless waives California Civil Code Section 1542 as to any
15 such unknown claims. California Civil Code Section 1542 reads as follows:

16 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
17 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
18 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
19 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
20 **SETTLEMENT WITH THE DEBTOR.”**

21 ERC, on behalf of itself only, acknowledges and understands the significance and consequences
22 of this specific waiver of California Civil Code section 1542.

23 **8.5** ERC, on one hand, and FOREVERGREEN, on the other hand, each release and
24 waive all claims they may have against each other for any statements or actions made or
25 undertaken by them in connection with the Notice of Violations or the Complaint. However, this
26 shall not affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

27 **9. CONSTRUCTION AND SEVERABILITY**

28 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the

1 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
2 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
3 construction of this Consent Judgment, the terms and conditions shall not be construed against
4 any Party.

5 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court
6 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
7 affected.

8 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
9 construed in accordance with the laws of the State of California.

10 **10. PROVISION OF NOTICE**

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

14 **For Environmental Research Center**

15 Chris Heptinstall, Executive Director
16 Environmental Research Center
17 3111 Camino Del Rio North, Suite 400
18 San Diego, CA 92108

18 William F. Wraith, Esq.
19 Wraith Law
20 16485 Laguna Canyon Road, Suite 250
21 Irvine, CA 92618

21 **For Defendants Forevergreen Worldwide Corporation, Forevergreen International, LLC
22 and Forevergreen IP, LLC**

23 MARK O. VAN WAGONER (SBN 79688)
24 SAVAGE, YEATES & WALDRON, P.C.
25 170 South Main Street, Suite 500
26 Salt Lake City, Utah 84101

27 With a copy to:

28 Allen K. Davis
Attorney-at-Law
979 South 420 West
Salem, Utah 84653

1
2 **11. COURT APPROVAL**

3 11.1 Upon execution of this Consent Judgment by the Parties, ERC shall file a Motion
4 for Court Approval. The Parties shall use their best efforts to support entry of this Consent
5 Judgment.

6 11.2 If the California Attorney General objects to any term in this Consent Judgment,
7 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
8 prior to the hearing on the motion.

9 11.3 If this Stipulated Consent Judgment is not approved by the Court despite the
10 Parties best efforts, it shall be null and void and have no force or effect.

11 **12. EXECUTION AND COUNTERPARTS**

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

15 **13. ENTIRE AGREEMENT, AUTHORIZATION**

16 13.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
18 negotiations, commitments and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party.
20 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
21 exist or to bind any Party.

22 13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
24 provided herein, each Party shall bear its own fees and costs.

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

26 14.1 This Consent Judgment has come before the Court upon the request of the Parties.
27 The Parties request the Court to fully review this Consent Judgment and, being fully informed
28 regarding the matters which are the subject of this action, to:


(a) Find that the terms and provisions of this Consent Judgment represent a good

1 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
2 diligently prosecuted, and that the public interest is served by such settlement; and

3 (b) Make the findings pursuant to California Health and Safety Code section
4 25249.7(f)(4), and approve the Settlement and this Consent Judgment.
5

6 **IT IS SO STIPULATED:**
7

8 **ENVIRONMENTAL RESEARCH CENTER**

9
10 
11 _____
Chris Heptinstall, Executive Director

Dated: 6/5/2013

12
13 **FOREVERGREEN WORLDWIDE CORPORATION**

14
15 _____
16 Ronald Williams

Dated: _____

17
18 **FOREVERGREEN INTERNATIONAL, LLC**

19
20 _____
21 Ronald Williams

Dated: _____

22
23 **FOREVERGREEN IP, LLC**

24
25 _____
26 Ronald Williams

Dated: _____

1 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
2 diligently prosecuted, and that the public interest is served by such settlement; and

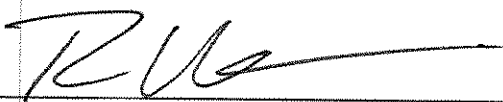
3 (b) Make the findings pursuant to California Health and Safety Code section
4 25249.7(f)(4), and approve the Settlement and this Consent Judgment.

5
6 **IT IS SO STIPULATED:**


7
8 **ENVIRONMENTAL RESEARCH CENTER**

9
10 _____ Dated: _____
11 Chris Heptinstall, Executive Director


12
13 **FOREVERGREEN WORLDWIDE CORPORATION**

14 
15 _____ Dated: 6-14-13
16 Ronald Williams

17
18 **FOREVERGREEN INTERNATIONAL, LLC**

19 
20 _____ Dated: 6-14-13
21 Ronald Williams

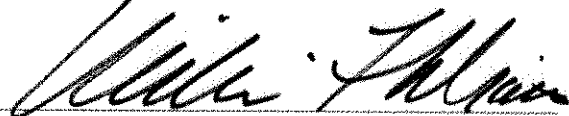
22
23 **FOREVERGREEN IP, LLC**

24 
25 _____ Dated: 6-14-13
26 Ronald Williams

27
28

1 APPROVED AS TO FORM:
2

3 WRAITH LAW
4

5 
6 William F. Wraith
7 Counsel for Environmental Research Center
8

Dated: 6/5/2013

9 SAVAGE, YEATES & WALDRON, P.C.
10

11 _____
12 Mark O. Van Wagoner
13 Counsel for Defendants
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

1 **APPROVED AS TO FORM:**

2

3 **WRAITH LAW**

4

5

6 William F. Wraith
Counsel for Environmental Research Center

Dated: _____

7

8

9 **SAVAGE, YEATES & WALDRON, P.C.**

10 Mark O. Van Wagoner
11 Mark O. Van Wagoner
12 Counsel for Defendants

Dated: 14 JUNE 2013

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

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.

NOV 19 2013

Dated: _____

Judge Franz E. Miller

Judge, Superior Court of the State of California

EXHIBIT "A"

WRAITH LAW

16485 LAGUNA CANYON ROAD
SUITE 250
IRVINE, CALIFORNIA 92618
Tel (949) 251-9977
Fax (949) 251-9978

December 19, 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; 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 to the alleged Violators identified below.

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

**Forevergreen Worldwide Corporation
Forevergreen International, LLC
Forevergreen IP, LLC**

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

ForeverGreen O3 World FIXX Meal Replacement Shake - Lead

ForeverGreen International SmartFood Thunder 24 Karat Chocolate Meal Replacement Shake - Lead

ForeverGreen International LLC LegaSea Azul - Lead

Forevergreen International Smartfood Pulse-8 - 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 December 19, 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 Violators violated Proposition 65 because they 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.

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

December 19, 2011

Page 3

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,



William Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Forevergreen Worldwide Corporation, Forevergreen International, LLC, Forevergreen IP, LLC, and their Registered Agents 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 Forevergreen Worldwide Corporation, Forevergreen International, LLC, and Forevergreen IP, LLC

I, William Wraith, declare:

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

2. I am an attorney for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 19, 2011



William Wraith

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On December 19, 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:

Ronald Williams, President
Forevergreen Worldwide Corp.
972 N 1430 W
Orem, UT 84057

Forevergreen Worldwide Corp.
972 N 1430 W
Orem, UT 84057

Paul Frampton
(Registered Agent of Forevergreen
International, LLC)
972 N 1430 W
Orem, UT 84057


Paul T. Frampton
(Registered Agent of Forevergreen IP,
LLC)
972 N 1430 W
Orem, UT 84057

On December 19, 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 December 19, 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 December 19, 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.*

December 19, 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