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GIDEON KRACOV (SBN 179815)
MITCHELL M. TSAI (SBN 277156)
THE LAW OFFICE OF GIDEON KRACOV
801 S. Grand Avenue, Ste. 1100
Los Angeles, CA 90017
213.629.2071
FAX 213.623.7755
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mmt@gideonlaw.net

Attorneys for Plaintiff
As You Sow

REC'D
DEC 12 2013
FILING WINDOW

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 28 2014

Sherri R. Carter, Executive Officer/Clerk
By Jeff W. Lipp, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

AS YOU SOW, a non-profit California
corporation,

Plaintiff,

v.

TRIVANI INTERNATIONAL LLC, DOES 1
through 10,

Defendant(s).

) Case No. BC487755

) **[PROPOSED] ORDER APPROVING**
) **PROPOSITION 65 CONSENT**
) **JUDGMENT**

) Dept: 40
) Judge: Michelle R. Rosenblatt

) Hearing Date: January 28, 2014
) Time: 8:30 a.m.

) Health & Safety Code § 25249.5, *et seq*

1 Plaintiff As You Sow's Motion for Court Approval of the Consent Judgment came on
2 regularly for hearing before this Court on January 28, 2014, the Honorable Michelle R.
3 Rosenblatt presiding, with attorneys for all parties in the case having had the opportunity to be
4 heard by this Court. After considering the Consent Judgment between Plaintiff As You Sow
5 and Defendants TRIVANI INTERNATIONAL, LLC and Doe 1 SARATI INTERNATIONAL
6 INC. the moving papers, declarations, pleadings, oral arguments and all other relevant
7 documents in the court file, and any other matters presented to this Court, and GOOD CAUSE
8 APPEARING THEREFORE, this Court GRANTS the Motion for Court Approval of the
9 Consent Judgment, and makes the following findings pursuant to California Health & Safety
10 Code section 25249.7(f) and 11 Cal. Code Regs. section 3201, *et seq.*:

- 11 1. The warning required by the Consent Judgment complies with Proposition 65;
- 12 2. The awards of attorney fees and costs provided in the Consent Judgment are
13 reasonable under California law;
- 14 3. The penalties provided by the Consent Judgment are reasonable; and
- 15 4. The Consent Judgment is in the public interest.

16 Therefore, for the foregoing reasons, the Consent Judgment shall be entered as the
17 Judgment of this Court.

18 IT IS SO ORDERED.

19
20 DATE: 1-28-14

MICHELLE R. ROSENBLATT

Honorable Michelle R. Rosenblatt
Judge of the Superior Court

1 GIDEON KRACOV (SBN 179815)
2 MITCHELL M. TSAI (SBN 277156)
3 THE LAW OFFICE OF GIDEON KRACOV
4 801 S. Grand Avenue, Ste. 1100
5 Los Angeles, CA 90017
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9 mmt@gideonlaw.net

10 Attorneys for Plaintiff
11 As You Sow

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Superior Court of California
County of Los Angeles

JAN 28 2014

Sherri R. Carter, Executive Officer/Clerk
By Jeff W. Lipp, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

12 AS YOU SOW, a non-profit California
13 corporation,

14 Plaintiff,

15 v.

16 TRIVANI INTERNATIONAL LLC, DOES 1
17 through 10,

18 Defendant(s).

) Case No. BC487755

) ~~PROPOSED~~ CONSENT JUDGMENT
) AS TO DEFENDANTS TRIVANI
) INTERNATIONAL, LLC AND DOE 1
) SARATI INTERNATIONAL, INC.

) Dept: 40
) Judge: Michelle R. Rosenblatt

) Hearing Date: January 28, 2014
) Time: 8:30 AM

) Health & Safety Code § 25249.5, *et seq.*

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1 This Consent Judgment is entered into by and between AS YOU SOW, plaintiff in this
2 matter (hereinafter “AYS” or “Plaintiff”), and defendants TRIVANI INTERNATIONAL, LLC
3 (hereinafter “Trivani”) and Doe 1 SARATI INTERNATIONAL, INC. (hereinafter “Sarati”)
4 (hereinafter collectively “Defendants”) pursuant to the Safe Drinking Water and Toxic
5 Enforcement Act of 1986, Health & Safety Code § 25249.5 *et. seq.* (hereinafter “Proposition
6 65”).

7 **1. Definitions.** As used in this Consent Judgment, the following definitions shall apply:

8 **1.1 “Products”** include consumer creams, gels and/or lotion products, manufactured
9 by or on behalf of Defendants for sale in California or to California consumers containing
10 progesterone as an ingredient. Progesterone is a chemical known to the State of California to
11 cause cancer (hereinafter “Progesterone”).

12 **1.2 “Products”** shall also include any future Products that are manufactured by or on
13 behalf of Defendants for sale in California or to California consumers under any product name
14 or brand, whether a current or new name and/or brand.

15 **1.3** Plaintiff and Defendants will be referred to collectively as the “Parties” or
16 individually as a “Party”

17 **2. Background.**

18 **2.1** Plaintiff AYS is a non-profit California corporation dedicated to, among other
19 causes, the protection of the environment, the promotion of human health, the improvement of
20 worker and consumer rights, environmental education and corporate accountability. AYS is
21 based in Oakland, California and is incorporated under the laws of the State of California. AYS
22 represents the public interest under Proposition 65 in this matter.

23 **2.2** Defendant Trivani is an expired Utah limited liability company.

24 **2.3** Defendant Sarati is a Texas corporation in good standing.

25 **2.4** Defendants manufacture, distribute, and sell topical creams containing
26 Progesterone, including the Products.

1 **2.5** On or about March 20, 2012, Plaintiff sent Defendant Trivani a notice letter
2 alleging a violation of Proposition 65 due to the failure to warn regarding progesterone in
3 “Provani Cream” (hereinafter “**Trivani Notice**”). The Parties met and conferred through
4 counsel after receipt of this Notice.

5 **2.6** On or about February 13, 2013, Plaintiff sent Defendant Sarati a notice letter
6 alleging a violation of Proposition 65 due to the failure to warn regarding progesterone in
7 “Provani Cream” and “Nature’s Precise Cream” (hereinafter “**Sarati Notice**”). The Parties met
8 and conferred through counsel after receipt of this Notice.

9 **2.7** Upon execution of this Consent Judgment, Plaintiff intends to file this Consent
10 Judgment in the Los Angeles County Superior Court.

11 **2.8** For purposes of this Consent Judgment only, the Parties stipulate that this Court
12 has jurisdiction over the allegations of the violations contained in the Notice and the Complaint
13 and personal jurisdiction over Defendants as to the acts or omissions alleged in the Complaint;
14 that venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter
15 this Consent Judgment.

16 **2.9** Defendants deny that the Products have been or are in violation of any law, and
17 further contend that all Products have been and are safe for use as directed. Defendants
18 expressly deny any violation under Proposition 65. The Parties desire to resolve this matter
19 (including the Notice, Complaint and all related matters as set forth herein) without further
20 litigation or cost.

21 **2.10** The Parties enter into this Consent Judgment to settle certain disputed claims as
22 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to
23 promote the public interest. By executing and complying with this Consent Judgment, no Party
24 admits any facts, any violations of law, or any conclusions of law including, but not limited to,
25 any facts or conclusions of law regarding any violations of Proposition 65, or any other
26 statutory, common law or equitable claim or requirement relating to or arising from Defendants’

1 Products. This Consent Judgment shall not be construed as an admission by Defendants as to
2 any of the allegations in the Notice or the Complaint.

3 **3. Injunctive Relief.**

4 **3.1** Beginning immediately, Defendants shall place the following Warning
5 prominently on the label of each of Defendants' Products sold to, or offered for sale to,
6 California consumers when, in the ordinary course of business, new labels for the Products are
7 printed, or after January 1, 2014, whichever is the earlier:

8 "WARNING: This product contains Progesterone, a chemical known to the State
9 of California to cause cancer. [Consult with your physician before using this
product.]"

10 (hereinafter "**Warning**"). The text in [brackets] is optional in Defendants' sole discretion.

11 **3.2** For Products sold to California consumers through the Internet, the Warning
12 shall be prominently displayed on each webpage describing the ingredients or attributes of the
13 Products. In addition, the Warning shall either be placed prominently on the Products' label,
14 be placed as an insert into the packaging or container of the Defendants' Products, or on an
15 invoice that accompanies the shipment of the Defendants' Products. The Warning shall be
16 displayed with such conspicuousness, as compared with other words, statements, designs, or
17 devices on the webpages, packaging, container, or invoice, so as to render it likely to be read
18 and understood by an ordinary individual prior to use. The Warning shall be at least the same
19 size as the largest of any other health or safety warnings on the webpage, invoice or product
20 packaging, and the word "warning" shall be in all capital letters and in bold print. A Warning
21 printed on an invoice must be in a type size at least as tall as the largest letter or numeral in the
22 name or price of the Defendants' Products printed on the invoice.

23 **3.3** Defendants need not apply the warning text in Section 3.1 to Products which
24 already have left Defendants' possession and thus are in the stream of commerce prior to the
25 date of entry of this Consent Judgment, or to Products sold before the new labels for those
26

1 Products are printed. The Parties agree Plaintiff's release of claims in Section 5 below
2 encompasses such Products.

3 **3.4** By January 1, 2014, and continuing thereafter, Defendants agree to provide
4 written notification to all buyers, excluding buyers who purchase Products solely for individual
5 consumption, and distributors of the Defendants' Products, including Products manufactured
6 under a private label program, of warning requirements under Proposition 65. Written notice
7 shall include information about how to comply with Proposition 65 warning requirements,
8 including, but not limited to, the Proposition 65 warning terms required in Sections 3.1–3.2, as
9 well as copies of the Office of Environmental Health Hazard Assessment's "Proposition 65 in
10 Plain Language" and "Proposition 65: Frequently Asked Questions."

11 **3.5** By January 1, 2014, Defendant Sarati agrees to amend its "MANUFACTURING/
12 FORMULATION AGREEMENT" to add the following text: "Certain products may not be sold
13 to California consumers unless they have been labeled for the California market, including
14 Proposition 65 label warnings. Any questions regarding whether a product purchased from or
15 manufactured by Sarati shall be labeled for the California market shall be referred to Sarati
16 before making any sale or shipment. Orders by California consumers that are fulfilled by Sarati
17 will remain Sarati's responsibility." Sarati may modify for clarity or accuracy in detail this
18 proposed text prior to use by January 1, 2014, but any such proposed modifications shall be
19 provided to Plaintiff for review before December 17, 2013. Sarati may amend its policies and
20 procedures from time to time, but the foregoing text (unless modified with Plaintiff's consent
21 prior to January 1, 2014) shall remain in the "MANUFACTURING/FORMULATION
22 AGREEMENT" until at least January 1, 2016. Thereafter, Sarati may modify the text from
23 time to time, so long as substantially similar text with regard to Proposition 65 labeling
24 requirements remains in the "MANUFACTURING/FORMULATION AGREEMENT" while
25 this Consent Judgment remains in effect.

1 **3.6** Compliance with this Consent Judgment shall constitute compliance with
2 Proposition 65 regarding Progesterone in the Products.

3 **4. Financial Settlement and Attorney's Fee Payments.**

4 **4.1** As consideration for the matters resolved herein, Defendant Trivani shall pay to
5 AYS a total of \$3,750.00 in satisfaction of civil penalties, payments in lieu of civil penalties, as
6 well as costs and attorney fees. Of the \$3,750.00 paid to AYS by Defendant Trivani, \$250.00 is
7 in satisfaction of civil penalties and \$3,500.00 is in satisfaction of attorney's fees and costs in
8 this matter. The payment in full shall be delivered to Gideon Kracov within ten (10) calendar
9 days after the date of notice of entry of this Consent Judgment. AYS shall be responsible for
10 compliance with Health & Safety Code Section 25249.12(d).

11 **4.2** As consideration for the matters resolved herein, Defendant Sarati shall pay to
12 AYS a total of \$12,500.00 in satisfaction of civil penalties, payments in lieu of civil penalties,
13 as well as costs and attorney fees. Of the \$12,500.00 paid to AYS by Defendant Sarati,
14 \$1,000.00 is in satisfaction of civil penalties and \$11,500.00 in satisfaction of attorney's fees
15 and costs in this matter. The payment in full shall be delivered to Gideon Kracov within ten
16 (10) calendar days after the date of notice of entry of this Consent Judgment. AYS shall be
17 responsible for compliance with Health & Safety Code Section 25249.12(d).

18 **5. Claims Covered and Released.**

19 **5.1** This Consent Judgment is a final and binding resolution between the Parties of
20 any and all alleged violations of Proposition 65 that was or could have been asserted by the
21 Parties on their own individual behalf and on behalf of the public interest arising from or related
22 to Defendants' Products up through the date of entry of this Consent Judgment, including, but
23 not limited to, any claims for attorneys' fees and costs. The Parties accordingly hereby
24 mutually release each other, including the Parties' predecessors, successors, affiliates, assigns,
25 suppliers, distributors, contract manufacturers, retailers, members and the officers, directors,
26 employees, shareholders, and counsel from and against the claims described in this paragraph,

1 and for avoidance of doubt Plaintiff's release of claims includes sales to California consumers
2 of those Products referenced in Sections 2.5–2.6. Defendants hereby release AYS from and
3 against any and all claims arising out of AYS' filing or prosecution of this action. Each Party
4 respectively waives any right to appeal or other review of this Consent Judgment, except as
5 expressly provided in this Consent Judgment.

6 **6. Covenant Not to Sue.**

7 Plaintiff and Defendants covenant and agree that with regard to the matters the Parties
8 have herein released and that are described above, the Parties will never institute a lawsuit or
9 administrative proceedings against the other, nor shall the Parties assert any claim of any
10 nature against any person or entity hereby released with regard to any such matters which have
11 been released. However, nothing in this paragraph shall be interpreted to preclude enforcement
12 of this Consent Judgment pursuant to Section 7 below.

13 **7. Enforcement of Consent Judgment.**

14 Any Party may, by noticed motion or order to show cause before the Superior Court of
15 Los Angeles, enforce this Consent Judgment. To enforce this Consent Judgment, any Party
16 must first give written notice of any violation of this Consent Judgment alleged to have
17 occurred, to the Party alleged to be in violation. The Parties shall meet and confer in good faith
18 and attempt to resolve the alleged violation. If a resolution is not reached within thirty (30)
19 days of the date of the notice, the aggrieved Party may move the Court to hear and resolve the
20 dispute and the moving party may seek such remedies as are provided by law for failure to
21 undertake the actions set forth in this Agreement, or a judgment which incorporates its terms,
22 potentially including sanctions for contempt. The prevailing Party in any proceeding brought to
23 enforce this Consent Judgment shall be entitled to recover from the other Party the prevailing
24 party's reasonable attorneys' fees and costs incurred in the investigation and prosecution of
25 such an enforcement proceeding.
26

1 **8. Application of Consent Judgment.**

2 Sections 3, 5 and 6 of this Consent Judgment shall apply to, be binding upon, and inure
3 to the benefit of the Parties and their divisions, subdivisions, subsidiaries, affiliates, successors,
4 predecessors and assigns, and the directors, officers, employees, legal counsel, and agents of
5 each of them, as applicable, and will inure to the benefit of the Parties' parent companies, all
6 suppliers, distributors, wholesalers, retailers and contract manufacturers of Defendants'
7 Products, and all of their respective directors, officers, employees, legal counsel, and agents.

8 **9. Modification/Termination of Consent Judgment.**

9 This Consent Judgment may be modified or terminated upon written agreement of
10 Defendants and AYS, with approval of the Court, or upon noticed motion for good cause
11 shown. If this Consent Judgment is not approved by the Court within 120 days of execution by
12 all Parties, it shall be void *ab initio* and of no force or effect, unless otherwise agreed to in
13 writing by the Parties. Any Party may withdraw from this Consent Judgment before it is
14 entered by the Court if the Office of Attorney General objects in writing to any term herein and
15 the Parties do not mutually agree to resolve said objection to the satisfaction of the Attorney
16 General prior to approval of this Consent Judgment by the Court; upon such withdrawal, this
17 Consent Judgment shall be void *ab initio* and of no force or effect.

18 **10. Governing Law.**

19 This Consent Judgment shall be governed by, and construed in accordance with, the
20 laws of the State of California. AYS shall comply with the obligations under Proposition 65 to
21 lodge this settlement with the Office of the Attorney General.

22 **11. Entire Agreement.**

23 The Parties declare and represent that no promise, inducement or other agreement has
24 been made conferring any benefit upon any party except those contained herein and that
25 Consent Judgment contains the entire agreement pertaining to the subject matter hereof. This
26 Consent Judgment supersedes any prior or contemporaneous negotiations, representations,

1 agreements and understandings of the Parties with respect to such matters, whether written or
2 oral. Parol evidence shall be inadmissible to show agreement by, between or among the Parties
3 to any term or condition contrary to or in addition to the terms and conditions contained in this
4 Consent Judgment. The Parties acknowledge that each has not relied on any promise,
5 representation or warranty, expressed or implied, not contained in this Consent Judgment.

6 **12. Challenges.**

7 Subject to their rights to apply for a modification of this Consent Judgment for good
8 cause shown under Section 9 hereof, the Parties agree that they, individually or collectively,
9 will not seek to challenge or to have determined invalid, void or unenforceable any provision of
10 this Consent Judgment or this Consent Judgment itself. The Parties understand that this
11 Consent Judgment contains the relinquishment of legal rights and each Party has, as each has
12 deemed appropriate, sought the advice of legal counsel, which each of the Parties has
13 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other
14 Party so as to create a fiduciary, agency or confidential relationship.

15 **13. Construction.**

16 This Consent Judgment has been jointly negotiated and drafted. The language of this
17 Consent Judgment shall be construed as a whole according to its fair meaning and not strictly
18 for or against any Party.

19 **14. Authority to Stipulate to Consent Judgment.**

20 Each signatory to this Consent Judgment represents and warrants that each signatory has
21 all requisite power, authority and legal right necessary to execute and deliver this Consent
22 Judgment and to perform and carry out the actions contemplated by this Consent Judgment.
23 Each signatory to this Consent Judgment represents that each has been duly authorized to
24 execute this Consent Judgment. No other or further authorization or approval from any person
25 will be required for the validity and enforceability of the provisions of this Consent Judgment,
26 except entry by the Court.

1 **15. Cooperation and Further Assurances.**

2 The Parties hereby will execute such other documents and take such other actions as
3 may be necessary to further the purposes and fulfill the terms of this Consent Judgment.

4 **16. Counterparts.**

5 This Consent Judgment may be executed in counterparts and has the same force and
6 effect as if all the signatures were obtained in one document.

7 **17. Notices.**

8 **17.1** All correspondence and notices shall be delivered using an overnight delivery
9 service with a tracking system to verify signatures and receipt and shall be deemed delivered on
10 the date of receipt. A courtesy e-mail copy may also be provided, but shall not affect the date of
11 receipt. All correspondence and notices required by this Consent Judgment to Plaintiff shall be
12 sent to:

13 As You Sow
14 1611 Telegraph Avenue
15 Suite 1450
16 Oakland, CA 94612

With a copy to:
Gideon Kracov
LAW OFFICE OF GIDEON KRACOV
801 South Grand Avenue
11th Floor
Los Angeles, CA 90017

17 **17.2** All correspondence and notices required by this Consent Judgment to Defendants
18 shall be sent to Defendants as follows:

19 Trivani International, LLC
20 198 S. Main Street
21 Springville, UT 84663

With a copy to:
Kenneth E. Chyten
LAW OFFICE OF KENNETH E. CHYTEN
300 E. Esplanade Drive
Suite 900
Oxnard, CA 93036

22 Sarati International
23 27502 Ted Hunt Road
24 Los Fresnos, TX 78566

With a copy to:
Robert Bockelman
LAW OFFICES OF ROBERT BOCKELMAN
2171 Junipero Serra Boulevard
Suite 470
Daly City, CA 94014

1 **18. Entry of Stipulation For Entry of Consent Judgment Required.**

2 This Consent Judgment shall be null and void *ab initio*, and without any force or effect,
3 unless fully approved as required by law and entered by the Court. If the Court does not enter
4 this Consent Judgment, the execution thereof by Defendants or AYS shall not be construed as
5 an admission by Defendants or AYS of any fact, conclusion of law or violation of law.

6 **19. Jurisdiction.**

7 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

8 **IT IS SO STIPULATED.**

9 DATED: 11/20, 2013



Barbara Creighton
President
Sarati International, Inc.

12 DATED: _____, 2013

Robert Steed
Chief Executive Officer
Trivani International, LLC

16 DATED: _____, 2013

Danielle Fugere
President
As You Sow

19 **IT IS SO ORDERED, AND JUDGED, AND DECREED.**

21 DATED: _____

The Honorable Michelle R. Rosenblatt
JUDGE OF THE SUPERIOR COURT

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5 an admission by Defendants or AYS of any fact, conclusion of law or violation of law.

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8 **IT IS SO STIPULATED.**

9 DATED: _____, 2013

10 _____
11 Barbara Creighton
12 President
13 Sarati International, Inc.

14 DATED: 11/20, 2013

15 _____
16 Robert Steed
17 Chief Executive Officer
18 Trivani International, LLC

19 DATED: _____, 2013

20 _____
21 Danielle Fugere
22 President
23 As You Sow

24 **IT IS SO ORDERED, AND JUDGED, AND DECREED.**

25 DATED: _____

26 _____
The Honorable Michelle R. Rosenblatt
JUDGE OF THE SUPERIOR COURT

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18. Entry of Stipulation For Entry of Consent Judgment Required.

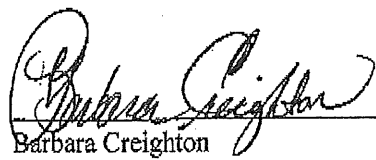
This Consent Judgment shall be null and void *ab initio*, and without any force or effect, unless fully approved as required by law and entered by the Court. If the Court does not enter this Consent Judgment, the execution thereof by Defendants or AYS shall not be construed as an admission by Defendants or AYS of any fact, conclusion of law or violation of law.

19. Jurisdiction.

This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

IT IS SO STIPULATED.

DATED: 11/20, 2013

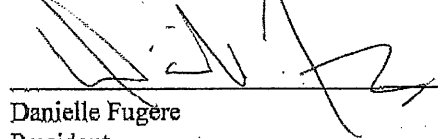


Barbara Creighton
President
Sarati International, Inc.

DATED: _____, 2013

Robert Steed
Chief Executive Officer
Triyani International, LLC

DATED: 11/20, 2013



Danielle Fugère
President
As You Sow

IT IS SO ORDERED, AND JUDGED, AND DECREED.

DATED: 1-28-14

MICHELLE R. ROSENBLATT

The Honorable Michelle R. Rosenblatt
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

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I, Gideon Kracov, being duly sworn, deposes and says:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 801 S. Grand Ave., 11th Fl., LA, CA 90017. On 1/28, 2014, the person identified below was served with the following documents:

Signed Consent Judgment and Order Approving Consent Judgment

The documents were served on:

Kenneth E. Chyten, Esq.
300 East Esplanade Drive
Suite 900
Oxnard, California 93036

Robert Bockelman
2171 Junipero Serra Bl.
Suite 470
Daly City, CA 94104

 X by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at 801 S. Grand Ave., Los Angeles, California, addressed as set forth above. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 1/28, 2014 at Los Angeles, California.



Gideon Kracov