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ALAMEDA COUNTY

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10 AMERICAN BOTANICAL PHARMACY, INC.

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ALAMEDA
13
14

15 ENVIRONMENTAL RESEARCH
16 CENTER, a California non-profit
corporation,

17 Plaintiff,

18 vs.

19 AMERICAN BOTANICAL
20 PHARMACY, INC.

21 Defendant,
22

) Case No.: RG14711406

) Judge:

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

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

) Action Filed:
Trial Date: None

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of the alleged violations of California's Safe Drinking
3 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5
4 *et seq.* (also known as and herein after referred to as "Proposition 65") regarding the following
5 products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a
6 single product):

- 7 1) American Botanical Pharmacy Dr. Schulze's Intestinal Formula #1
- 8 2) Dr. Schulze's American Botanical Pharmacy Protect
- 9 3) Dr. Schulze's American Botanical Pharmacy SuperFood 100
- 10 4) Dr. Schulze's American Botanical Pharmacy 100% Organic HerbalMucil Plus
- 11 5) Dr. Schulze's American Botanical Pharmacy SuperFood Plus
- 12 6) American Botanical Pharmacy Dr. Schulze's Female "Shot"
- 13 7) Dr. Schulze's American Botanical Pharmacy 100% Herbal SuperSlim
- 14 8) Dr. Schulze's American Botanical Pharmacy Dr. Schulze's Intestinal Formula # 2

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

21 **1.3** Defendant American Botanical Pharmacy, Inc. is referred to herein as ("ABP" or
22 "Defendant"). ABP is a California Corporation that is a person within the meaning of H&S
23 Code §25249.11(a) and has, at all material times, employed ten or more persons. ABP designs,
24 distributes and sells the Covered Products.

25 **1.4** ERC and ABP are hereinafter referred to individually as a "Party" or collectively
26 as the "Parties."

27 **1.5** On September 17, 2012, pursuant to California Health and Safety Code Section
28 25249.7(d)(1), ERC served a Notice of Violation of Proposition 65 ("Notice of Violation") on

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

3 **1.6** After more than sixty (60) days passed since service of the Notice of Violation,
4 and no designated governmental agency filed a complaint against ABP with regard to the
5 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 Violation.

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

15 **1.8** The Parties enter into this Consent Judgment in order to settle, compromise and
16 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
17 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
18 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
19 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
20 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
21 wrongdoing, or liability, including without limitation, any admission concerning any alleged
22 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent
23 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
24 may have in any other or future legal proceeding unrelated to these proceedings. However,
25 nothing in this Section shall affect the enforceability of this Consent Judgment.

26 **1.9** The "Effective Date" of this Consent Judgment shall be the date this Consent
27 Judgment is entered as a judgment by the Court.

28 **2. JURISDICTION AND VENUE**

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

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

6 **3.1 Clear and Reasonable Warnings**

7 On and after the Effective Date of this Consent Judgment, ABP shall be permanently
8 enjoined from Distributing into California; manufacturing for sale in California, and/or directly
9 selling to a consumer in the State of California any Covered Product for which the maximum
10 dose recommended on the label contains more than 0.5 micrograms (mcg) of lead, as calculated
11 in accordance with the formula set forth in Section 3.7, unless Defendant complies with the
12 required warning methods set forth in Section 3.1 through Section 3.6. The term "Distributing
13 into California" means to ship any of the Covered Products into California for sale in California,
14 or to sell or provide any of the Covered Products to any person or entity that Defendant knows
15 will sell or intends to sell any of the Covered Products in California.

16 In all warning methods contained in Section 3.2 through Section 3.6 below, the Warning
17 shall be provided with such conspicuousness, as compared with other words, statements, designs,
18 or devices on the container, labeling, webpage, catalog page, invoice, insert, or in the store as to
19 render it likely to be read and understood by an ordinary individual under customary conditions
20 of purchase or use. In all warning methods, no other statements about Proposition 65 or lead
21 may accompany the Warning, except that Defendant may refer consumers to a single website for
22 further information. The Warning shall be at least the same size as the largest of any other health
23 or safety warnings on the container, labeling, webpage, catalog page, invoice, or insert, as
24 applicable, and the word "WARNING" shall be in all capital letters and in bold print. The
25 Warning shall be contained in the same section of the container, labeling, webpage, catalog page,
26 invoice, or insert, as applicable, which states other safety warnings concerning the use of the
27 Covered Product.

28 **3.2 The Warning Language.**

1 The warning language shall be one of the following:

2 **[California Proposition 65] WARNING [(California Proposition 65)]** These
3 (This) product(s) contain(s) [lead,] [a] chemical[s] known [to the State of
4 California] to cause [cancer and] birth defects or other reproductive harm.

5 **[California Proposition 65] WARNING [(California Proposition 65)]** These
6 (This) product(s) contain(s) [lead,] [a] substance[s] known [to the State of
7 California] to cause [cancer and] birth defects or other reproductive harm.

8 The text in brackets in the warnings above is optional. The words "cancer and" shall be included
9 in the warning only if the maximum recommended dose stated on the Covered Product's label
10 contains more than 15 micrograms (mcg) of lead as calculated in accordance with the formula set
11 forth in Section 3.7 below.

12 **3.3 Warning Method (Store Warning)**

13 For sales in retail stores, the Warning may be provided by either of the following
14 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and
15 Reasonable Warnings in Retail Stores, below:

16 (1) *Identifying Signs and Designated Symbol in Retail Stores.* In retail stores, the
17 Warning may be provided through the use of a system that combines both a designated symbol
18 and an identifying sign that explains the meaning of the designated symbol or a sign. The
19 designated symbol ("Symbol") shall be the Symbol shown on Exhibit B and shall appear as
20 shown on Exhibit B, with black "Prop 65" and "!" text, black border, and yellow background,
21 wherever it is displayed.

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

23 (i) *Form of Sign.* A Sign shall be rectangular and at least 36 square
24 inches in size, with the word "WARNING" centered one-half of an inch from the top of the sign
25 all in one-half inch capital letters. The Sign shall be substantially identical to the sign attached
26 hereto as Exhibit E. For the body of the warning message, left and right margins of at least one-
27 half of an inch, and a bottom margin of at least one-half inch shall be observed. The Symbol
28 must be at least one inch high. Larger Signs shall bear substantially the same proportions of type

1 size and spacing to sign dimension as a sign that is 36 square inches in size. Unless modified by
2 agreement of the Parties, the Sign shall contain one of the following text (text in brackets is
3 optional, except as described in Section 3.2):

4 WARNING:
5 CALIFORNIA PROPOSITION 65
6 Products with the symbol
7 *[Shown on Exhibit B]*
8 contain [lead,] [a] chemical[s] known to the State of California to
9 cause [cancer and] birth defects
10 or other reproductive harm.

11 CALIFORNIA PROPOSITION 65
12 Products with the symbol
13 *[Shown on Exhibit B]*
14 contain [lead,] [a] substance [s] known to the State of California to
15 cause [cancer and] birth defects
16 or other reproductive harm.

17 (ii) Placement of Sign. Signs shall be placed in each California
18 establishment in which any of Defendant's Covered Products that requires a warning are sold.
19 Signs shall not be covered or obscured, and shall be placed and displayed in a manner rendering
20 them likely to be read and understood by an ordinary individual prior to purchase. At least one
21 Sign shall be posted in each aisle or on each shelf or display where the Covered Products for
22 which the warning is being provided are offered or displayed for sale, unless the retail
23 establishment has less than 7,500 square feet of retail space, in which case the Sign may be
24 posted at each cash register. Additional signs shall be posted as are necessary to assure that any
25 potential purchaser of Covered Products would be reasonably likely to see a Sign prior to
26 purchase.

27 (iii) Defendant shall provide an exemplar Sign to the central purchasing
28 office for all distributors and retail establishments with whom Defendant transacts business for
sale of the Covered Products in California that require a warning. Defendant shall provide Signs
and instructions by letter ("Warning Instruction Letter," Exhibit C) to the central purchasing

1 office of each distributor or retailer with whom Defendant transacts business and that offers any
2 of the Covered Products for sale in California retail stores, requiring such retailers to post the
3 Signs as described in Section 3.3(1)(A)(ii) above. The Warning Instruction Letter shall request
4 such retailers to respond with a written acknowledgement that the Signs will be posted within 30
5 days of receipt of the Warning Instruction Letter. Defendant shall send a follow-up
6 communication ("Follow-Up Warning Instruction Letter," Exhibit D) to entities who were sent
7 the original instructions and who did not return a timely acknowledgment. The Signs, Warning
8 Instruction Letters, and Follow-Up Warning Instruction Letters shall be delivered in person or
9 via a shipping method that is traceable to ensure retailers received the information. Defendant
10 shall maintain files demonstrating compliance with this provision, including the communications
11 sent and receipts of any acknowledgments from retailers and distributors, which Defendant shall
12 provide to ERC upon written request. If Defendant learns that any retailer offering any of the
13 Covered Products for sale in any California retail store does not return an acknowledgement to
14 the Warning Instruction Letter and Follow-Up Warning Instruction Letter within 30 days of
15 receiving the Follow-Up Warning Instruction Letter, or a retailer or distributor is failing to post
16 or maintain the Sign in accordance with subsection (ii) above, then Defendant shall stop
17 providing Covered Products to such retailer, distributor, or other person until it verifies that
18 compliance with the terms of subsection (ii) above is achieved.

21 (iv) If Defendant complies with the terms of subsection (iii) above, it shall
22 not be found to have violated this Consent Judgment where a retail store, distributor, or other
23 person fails to post or maintain the Sign in accordance with this Consent Judgment.

25 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol shall be
26 prominently displayed with such conspicuousness, as compared with other words, statements,
27 designs, or devices used at the point the Covered Product is offered for sale, as to render the
28 Symbol likely to be seen by an ordinary individual prior to purchase. The Symbol shall be

1 permanently affixed to or printed on (at the point of manufacture, prior to shipment to California,
2 or prior to distribution within California) the outside packaging or container of each unit of the
3 Covered Product, in which case the Symbol must be at least as tall as the largest letter in any
4 other health or safety warning on that product label. In no case shall the text "Prop 65" and "!"
5 be less than one-quarter inch (0.25 inch) high.
6

7 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not using the
8 Identifying Signs and Designated Symbol in Retail Stores system described above in Section
9 3.3(1), the Warning set forth in Section 3.2 may be provided by signs placed and displayed in a
10 manner rendering them likely to be read and understood by an ordinary individual prior to
11 purchase. Signs containing the warning set forth in Section 3.2 shall be posted in each aisle or
12 on each shelf or display where the Covered Products for which the warning is being provided are
13 offered or displayed for sale, unless the retail establishment has less than 7,500 square feet of
14 retail space, in which case the Sign may be posted at each cash register and shall not be
15 obscured. Any sign pursuant to this subsection shall be substantially identical to the sign
16 attached as Exhibit F (but names of Covered Products may change so as to list only those
17 Covered Products which require a warning). The sign must be rectangular and at least 36 square
18 inches in size, with the word "WARNING" in bold and entered one-half of an inch from the top
19 of the sign all in one-half inch capital letters. For the body of the warning message, left and right
20 margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be
21 observed. Larger signs shall bear substantially the same proportions of type size and spacing to
22 sign dimension as a sign that is 36 square inches in size. Each sign shall name each Covered
23 Product that requires the Warning pursuant to Section 3.1. If Defendant warns under this Section
24 3.3(1)(B)(2), for any retail store not operated by Defendant, then Defendant shall provide the
25 sign to the retail store, send the Warning Instruction Letter, and comply with all other
26 requirements under Section 3.3(1)(A)(iii) above.
27
28

1 **3.4 Warning Method No. 3 (Website Warning)**

2 The Warning stated in Section 3.2 shall be given in conjunction with all sales of the
3 Covered Products via the Internet, and such Warning shall appear in one of the following ways:
4 (a) on the same web page on which the Covered Product is displayed; (b) on the same web page
5 as the order form for the Covered Product; (c) on the same page as the price for any Covered
6 Product; (d) on one or more web pages displayed to a purchaser during the checkout process; (e)
7 an "Insert Warning" as defined below; or (f) an "Invoice Warning" as defined below. The
8 Warning stated in Section 3.2 shall be used and shall appear in any of the above instances
9 adjacent to or immediately following the display, description, or price of the Covered Product for
10 which it is given, in the same type size or larger than the text of the Covered Product's
11 description.

12 Insert Warning: Where the Covered Product is being shipped to a consumer in California
13 and may be returned by the consumer for a full refund with no extra charge or shipping or
14 handling fee, the warning stated in Section 3.2 may be displayed on the invoice or other package
15 insert that accompanies each box of Covered Products going to a consumer in California. The
16 insert warning shall be a minimum of 5 inches x 7 inches and shall be substantially identical to
17 the insert warning attached as Exhibit F. The Insert Warning shall state the name(s) of the
18 products subject to the Warning, or a list of all of the Covered Products, unless the shipment
19 contains only products with more than 0.5 micrograms (**mcg**) of lead. No other statements about
20 Proposition 65 or lead may accompany the Warning on the package insert, except that Defendant
21 may refer consumers to a single website for further information.

22 Invoice Warning: Where the Covered Product may be returned by the consumer for a
23 full refund with no extra charge or shipping or handling fee, the Warning may alternatively be
24 displayed on an invoice that accompanies the shipment of the Covered Product. The Warning
25 shall be displayed with such conspicuousness, as compared with other words, statements,
26 designs, or devices on the invoice, as to render it likely to be read and understood by an ordinary
27 individual prior to use. The word "WARNING" shall be in all capital letters and in bold print.
28 No other statements about Proposition 65 or lead may accompany the warning. A Warning

1 printed on an invoice must be in a type size that is 1) at least as tall as the largest letter or
2 numeral in the name of the Covered Product printed on the invoice, or 2) at least as tall as the
3 largest of any other health or safety warnings on the invoice, whichever is larger.

4 **3.5 Warning Method No. 4 (Printed Catalog)**

5 For Covered Products sold to California consumers through a printed catalog, the
6 Warning shall be prominently displayed on each catalog page that contains a description of the
7 ingredients or attributes of the Covered Product. Where the Covered Product may be returned by
8 the consumer for a full refund with no extra charge or shipping or handling fee, the Warning may
9 alternatively be displayed on the invoice or other package insert as pursuant to Section 3.4 and as
10 attached in Exhibit F (but names of Covered Products may change so as to list only those
11 Covered Products which require a Warning).

12 **3.6 Warning Method No. 5 (Other)**

13 For sales and distribution of Covered Products not described in subsections 3.2, 3.3, 3.4,
14 through 3.5, above, the Warning shall be provided at the point of sale or distribution prior to
15 purchase by the consumer, pursuant to all requirements set forth in Section 3.1.

16 **3.7 Calculation of Lead Levels**

17 As used in this Consent Judgment, lead levels are calculated pursuant to the testing
18 protocol described in Section 3.9. For purposes of measuring the lead, the highest lead detection
19 result of the three (3) randomly selected samples of the Covered Products will be controlling. For
20 purposes of this Consent Judgment, daily lead exposure levels shall be measured in micrograms,
21 and shall be calculated using the following formula: Micrograms of lead per gram of product,
22 multiplied by grams per serving of the product (using the largest serving size appearing on the
23 Covered Product's label), multiplied by servings of the product per day (using the largest number
24 of servings in the recommended dosage appearing on the Covered Product's label), which equals
25 micrograms of lead exposure per day.

26 **3.8 Reformulated Covered Products**

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

1 **3.9 Testing and Quality Control Methodology**

2 (a) Beginning within one year of the Effective Date, ABP shall test three (3)
3 randomly selected samples of each of the Covered Products (in the form intended for sale to the
4 end-user) for lead content. The testing requirement does not apply to any of the Covered
5 Products for which ABP has provided the warning specified in Section 3.2.

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

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

13 (d) ABP shall retain all test results and documentation for a period of four (4) years
14 from the date of each test. ABP shall arrange for the laboratory conducting these tests to send the
15 test results to ERC within 10 days of conducting each test.

16 (e) ABP shall test each of the Covered Products at least once a year for a minimum of
17 four (4) consecutive years by testing three (3) randomly selected samples of each Covered
18 Product which ABP intends to sell or is manufacturing for sale in California, directly selling to a
19 consumer in California, or Distributing into California. If tests conducted pursuant to this Section
20 demonstrate that no warning is required for a Covered Product during each of four (4)
21 consecutive years, then the testing requirements of this Section will no longer be required as to
22 that Covered Product. However, if during or after the four (4) year period, ABP changes
23 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
24 Products, ABP shall test that Covered Product annually for at least four (4) consecutive years
25 after such change is made.

26 **4. SETTLEMENT PAYMENT**

27 **4.1** ABP shall remit a total payment of \$252,500.00 ("Payment"), which shall be in
28 full and final satisfaction of all civil penalties, payment in lieu of civil penalties, and attorney's

1 fees and costs. ABP shall make one-half of the Payment 10 days after the Effective Date and the
2 remaining one-half on or before February 15, 2014. The payment shall be in the form of a check
3 sent to counsel for ERC, Richard Drury, Lozeau | Drury LLP, 410 12th Street, Suite 250,
4 Oakland, California, 94607. The checks shall be made payable to "Lozeau Drury Attorney-Client
5 Trust account." Lozeau Drury shall allocate payment as follows:

6 **4.2** \$46,604.00 as civil penalties pursuant to California Health and Safety Code
7 Section 25249.7(b)(1). Of this amount, \$34,953.00 shall be payable to the Office of
8 Environmental Health Hazard Assessment ("OEHHA"), and \$11,651.00 shall be payable to
9 ERC. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil
10 penalty to OEHHA.

11 **4.3** \$20,206.00 payable to ERC as reimbursement to ERC for reasonable costs
12 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in
13 bringing this action.

14 **4.4** \$132,825.00 payable to ERC in lieu of further civil penalties, for the day-to-day
15 business activities such as (1) continued enforcement of Proposition 65, which includes work,
16 analysis and testing of consumer products that may contain Proposition 65 chemicals, focusing
17 on the same or similar type of ingestible products that are the subject matter of the current action;
18 (2) the continued monitoring of past consent judgments and settlements to ensure companies are
19 complying with Proposition 65; and (3) giving a donation of \$7,000.00 to Woman's Voices For
20 The Earth to address reducing toxic chemical exposures in California.

21 **4.5** \$45,865.00 payable to Lozeau Drury LLP as reimbursement of ERC's attorney's
22 fee and costs.

23 **4.6** ABP's failure to remit payment before or on the due date shall be deemed a
24 material breach of this Agreement.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only (i) by written agreement and
27 stipulation of the Parties and (ii) upon entry by the Court of a modified consent judgment.

28 **5.2** Should there be an amendment to Proposition 65 or its regulations, then any party

1 may seek to modify the Consent Judgment accordingly.

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

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
4 this Consent Judgment.

5 **6.2** Any Party may, by motion or application for an order to show cause filed with
6 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
7 party in any such motion or application may request that the Court award its reasonable
8 attorneys' fees and costs associated with such motion or application.

9 **7. APPLICATION OF CONSENT JUDGMENT**

10 This Consent Judgment shall apply to, be binding upon, and benefit the Parties, and their
11 respective officers, employees, agents, wholly-owned subsidiaries and subdivisions, and the
12 successors and assigns of any of them. This Consent Judgment shall have no application to
13 Covered Products which are distributed or sold exclusively outside the State of California and
14 which are not used by California consumers.

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

16 **8.1** ERC on behalf of itself, its agents, officers, representatives, successors, and
17 assigns, and in the public interest releases (a) ABP and its past and present parent companies,
18 subsidiaries, affiliates, and divisions; (b) each of their respective licensors, licensees, franchisors,
19 franchisees, joint venturers, partners, vendors, manufacturers, packagers, contractors, and
20 finished product and ingredient suppliers; (c) each of their respective distributors, wholesalers,
21 retailers, users, packagers and all other entities in the distribution chain of the Covered Products;
22 and (d) each of the respective officers, directors, shareholders, employees, and agents of the
23 persons and entities described in (a) through (c) above (the persons and entities identified in (a),
24 (b), (c), and (d), above, including the predecessors and assigns of any of them, are collectively
25 referred to as "the Released Parties") from all claims for violations of Proposition 65 up through
26 the Effective Date based on exposure to lead from the Covered Products as set forth in the Notice
27 of Violation and the Complaint. The Released Parties does not include private label customers of
28 ABP.

1 **8.2** ERC, on behalf of itself only, hereby releases and discharges ABP from all known
2 and unknown claims for alleged violations of Proposition 65 arising from or relating to alleged
3 exposures to lead or lead compounds in the Covered Products as set forth in the Notice of
4 Violation and the Complaint. It is possible that other claims not known to the Parties arising out
5 of the facts alleged in the Notice of Violation or the Complaint and relating to lead in the
6 Covered Products that were manufactured before the Effective Date will develop or be
7 discovered. ERC, on behalf of itself only waives California Civil Code Section 1542, which
8 reads as follows:

9 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
10 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
11 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
12 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
13 **SETTLEMENT WITH THE DEBTOR.”**

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

16 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
17 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to
18 lead and lead compounds in the Covered Products as set forth in the Notice of Violation and the
19 Complaint.

20 **8.4** ERC, on one hand, and ABP, on the other hand, each release and waive all claims
21 they may have against each other for any statements or actions made or undertaken by them in
22 connection with the Notice of Violation or the Complaint. However, this shall not affect or limit
23 any Party's right to seek to enforce the terms of this Consent Judgment.

24 **9. CONSTRUCTION AND SEVERABILITY**

25 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
26 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
27 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
28 construction of this Consent Judgment, the terms and conditions shall not be construed against

1 any Party.

2 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court
3 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
4 affected.

5 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
6 construed in accordance with the laws of the State of California.

7 **10. PROVISION OF NOTICE**

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

11 **For Environmental Research Center**
12 Chris Heptinstall, Executive Director
13 Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

14 With a copy to:

15 Richard Drury
16 Lozeau | Drury LLP
410 12th Street, Suite 250
17 Oakland, CA 94607

18 **For American Botanical Pharmacy, Inc.**

19 Monty Agarwal
20 Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
21 San Francisco, CA 94111

22 With a copy to:

23 Adam Loef
American Botanical Pharmacy, Inc.
24 P.O. Box 9849
Marina Del Rey, CA 90295

25 **11. COURT APPROVAL**

26 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall file a Motion
27 for Court Approval. The Parties shall use their best efforts to support entry of this Consent
28

1 Judgment.

2 **11.2** If the California Attorney General objects to any term in this Consent Judgment,
3 the Parties shall use their best efforts to resolve the concern in a timely manner, and, if possible,
4 prior to the hearing on the motion.

5 **11.3** If the Court, despite the Parties' best efforts, does not approve this Stipulated
6 Consent Judgment, it shall be null and void and have no force or effect.

7 **12. EXECUTION AND COUNTERPARTS**

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

11 **13. ENTIRE AGREEMENT, AUTHORIZATION**

12 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
13 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
14 negotiations, commitments and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any Party.
16 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
17 exist or to bind any Party.

18 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
19 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
20 provided herein, each Party shall bear its own fees and costs.

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

22 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
23 The Parties request the Court to fully review this Consent Judgment and, being fully informed
24 regarding the matters which are the subject of this action, to:

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

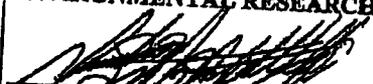
28 (b) Make the findings pursuant to California Health and Safety Code Section

1 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

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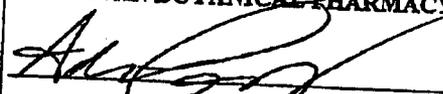
IT IS SO STIPULATED:

ENVIRONMENTAL RESEARCH CENTER


Chris H. Binstall, Executive Director

Dated: 12/18/2013

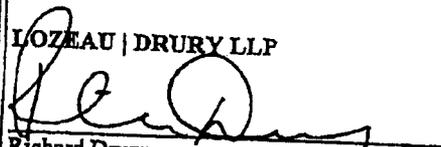
AMERICAN BOTANICAL PHARMACY, INC.


Current CEO or President

Dated: 12/19/13

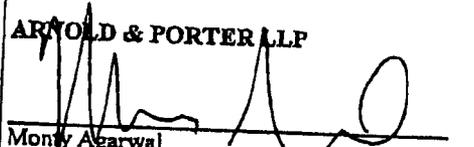
APPROVED AS TO FORM:

LOZEAU | DRURY LLP


Richard Drury
Counsel for Environmental Research Center

Dated: 12/18/2013

ARNOLD & PORTER LLP


Monty Agarwal
Counsel for American Botanical Pharmacy, Inc.

Dated: 2/7/2014

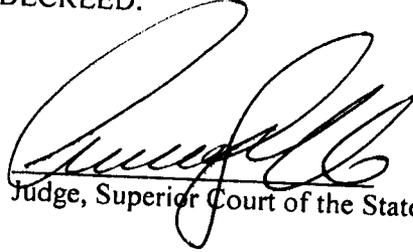
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ORDER AND JUDGMENT

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.

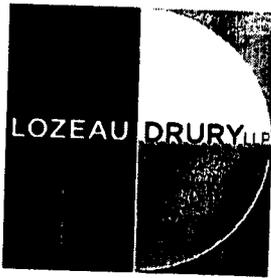
Dated: MAR 04 2014


Judge, Superior Court of the State of California

A

EXHIBIT A: Notice of Violation

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T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
American Botanical Pharmacy
P.O. Box 9849
Marina Del Rey, CA 90295

Current CEO or President
Dr. Schulze's American Botanical Pharmacy
P.O. Box 9699
Marina Del Rey, CA 90295

Current CEO or President
American Botanical Pharmacy
P.O. Box 9699
Marina Del Rey, CA 90295

Current CEO or President
Dr. Schulze's American Botanical Pharmacy
4114 Glencoe Ave.
Marina Del Rey, CA 90295

Kirt Sechooler
(American Botanical Pharmacy's
Registered Agent for Service of Process)
21243 Ventura Boulevard, Suite 227
Woodland Hills, CA 91364

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

Re: Notice of Violations of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

VIA PRIORITY MAIL

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

I represent the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

**American Botanical Pharmacy
Dr. Schulze's American Botanical Pharmacy**

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

**American Botanical Pharmacy Dr. Schulze's Intestinal Formula #1
Maximum Strength - Lead**

Dr. Schulze's American Botanical Pharmacy Protect - Lead

Dr. Schulze's American Botanical Pharmacy SuperFood 100 - Lead

**Dr. Schulze's American Botanical Pharmacy 100% Organic HerbalMucil
Plus - Lead**

Dr. Schulze's American Botanical Pharmacy SuperFood Plus - Lead

American Botanical Pharmacy Dr. Schulze's Female "Shot" - Lead

Dr. Schulze's American Botanical Pharmacy 100% Herbal SuperSlim - Lead

**Dr. Schulze's American Botanical Pharmacy Dr. Schulze's Intestinal
Formula # 2 Powder - Lead**

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

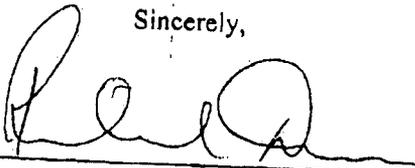
This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue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

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to the identified chemicals. Each of these ongoing violations has occurred on every day since September 17, 2009, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments
Certificate of Merit

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 17, 2012
Page 4

Certificate of Service
OEHHA Summary (to American Botanical Pharmacy and its Registered Agent for
Service of Process only and to Dr. Schulze's American Botanical Pharmacy)
Additional Supporting Information for Certificate of Merit (to AG only)

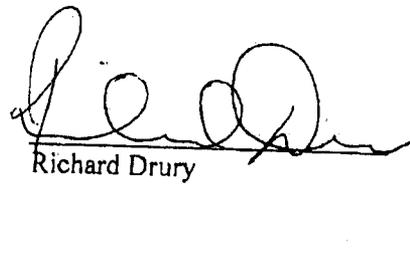
CERTIFICATE OF MERIT

**Re: Environmental Research Center's Notice of Proposition 65 Violations by
American Botanical Pharmacy and Dr. Schulze's American Botanical
Pharmacy**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 17, 2012


Richard Drury

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On September 17, 2012, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
American Botanical Pharmacy
P.O. Box 9849
Marina Del Rey, CA 90295

Kirt Sechooler
(American Botanical Pharmacy's
Registered Agent for Service of Process)
21243 Ventura Boulevard, Suite 227
Woodland Hills, CA 91364

Current CEO or President
Dr. Schulze's American Botanical Pharmacy
P.O. Box 9699
Marina Del Rey, CA 90295

Current CEO or President
Dr. Schulze's American Botanical Pharmacy
4114 Glencoe Ave.
Marina Del Rey, CA 90295

Current CEO or President
American Botanical Pharmacy
P.O. Box 9699
Marina Del Rey, CA 90295

On September 17, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid 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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 17, 2012
Page 7

On September 17, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on September 17, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

Notice of Violations of California Health & Safety Code §25249.5 et seq.
September 17, 2012
Page 8

Service List

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

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EXHIBIT B: Warning Symbol





EXHIBIT C

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EXHIBIT C: Letter to Retailers and Distributors

(For use if ABP provides warning signs pursuant to Section 3.3)

**THIS COMMUNICATION APPLIES ONLY TO
RETAIL LOCATIONS IN CALIFORNIA**

ABP has entered into a Consent Judgment with Environmental Research Center, Inc. regarding the presence of lead in specified dietary supplements sold in California, including those sold by its franchisees at retail locations in California.

Under the terms of this Consent Judgment, ABP is providing the enclosed warning sign to you so that they can be posted in retail stores. The signs must be posted in close proximity to each respective product that is expressly identified on the sign, such that the consumer, under customary conditions of purchase, could reasonably determine that the warning relates to the specific products listed. No other statements about Proposition 65 or lead may accompany the warning. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers prior to purchasing the products. For example, a warning sign placed in the aisle or shelf or display where the product is offered or displayed for sale would be in close proximity to the product.

Please sign and return the written acknowledgment below within 30 days of receiving this letter to acknowledge that you have received the warnings and that you will use them in accordance with these specifications until you receive written instruction from ABP to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate warning locations in the store, please contact [Contact Information].

Acknowledged by:

_____ (Signature)

_____ (Print Name)

_____ (Company/Store Location)

_____ (Date)

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EXHIBIT D: Follow-Up Letter to Retailers and Distributors

(For use if ABP provides sign and symbol warnings pursuant to Section 3.3)

**THIS COMMUNICATION APPLIES ONLY TO
RETAIL LOCATIONS IN CALIFORNIA**

On [Date], ABP sent you a letter enclosing signs to place on shelves holding any of the specified dietary supplements identified on the sign, pursuant to a Consent Judgment entered into between ABP and Environmental Research Center, Inc. (ERC) regarding the presence of lead in specified dietary supplements sold in California.

As set forth in that letter, the signs must be posted in close proximity to each respective product that is expressly identified on the sign, such that the consumer, under customary conditions of purchase, could reasonably determine that the warning relates to the specific products listed. No other statements about Proposition 65 or lead may accompany the warning. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers prior to purchasing the products. For example, a warning sign placed in the aisle or shelf or display where the product is offered or displayed for sale would be in close proximity to the product.

We have not received your written acknowledgment that you have received the signs and that your stores will post them as specified. Please sign and return the written acknowledgment below as soon as possible to acknowledge that you have received the signs and that they will be used or provided in accordance with these specifications until you receive written instructions from ABP to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate warning locations on the product(s), please contact [Contact Information].

Acknowledged by:

(Signature)
(Print Name)
(Company/Store Location)
(Date)

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EXHIBIT E: Section 3.3(1)(A)(i) Exemplar Symbol + Sign

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WARNING
(California Proposition 65)
Products with the symbol



contain a substance
known to the State of California
to cause cancer and birth defects or other
reproductive harm.

F

1 EXHIBIT F: Exemplar Section 3.3(2) Store Sign and Insert Warning
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4 **WARNING**
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6 **(California Proposition 65)**
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10 These products contain a substance
11 known to the State of California
12 to cause cancer and birth defects or other
13 reproductive harm.
14

15 [List of Products, if required by Section 3.4]

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17 [For more information, please visit [insert URL]]
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PROOF OF SERVICE

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I, Toyer Grear, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 410 12th Street, Suite 250 Oakland, CA 94607. On February 10, 2014 I served a copy of the following documents:

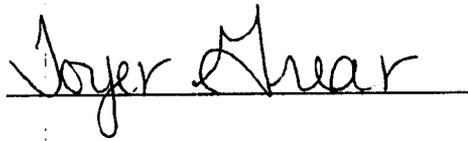
[PROPOSED] STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER

- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below.
- By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.
- By placing the document(s) listed above in a sealed Federal Express envelope and affixing pre-paid air bill, and causing the envelope to be delivered to a federal express agent for delivery.
- By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Proposition 65 Enforcement Reporting
Attention: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, California 94612-0550

Monty Agarwal
Arnold & Porter LLP
Three Embarcadero Center
10th Floor
San Francisco, CA 94111

I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed February 10, 2014, at Oakland, California.



Toyer Grear