

ENDORSED
FILED
ALAMEDA COUNTY

JAN 21 2014

CLERK OF THE SUPERIOR COURT
By PAM WILLIAMS
Deputy

1 LAW OFFICE OF MICHAEL FREUND
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10 ENVIRONMENTAL RESEARCH CENTER

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18 Attorney for Defendant
19 JOE WELLS ENTERPRISES, INC. dba MAX MUSCLE SPORTS NUTRITION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF ALAMEDA

22 ENVIRONMENTAL RESEARCH CENTER,)
23 a non-profit California corporation,)
24 Plaintiff,)
25 v.)
26 JOE WELLS ENTERPRISES, INC. dba MAX)
27 MUSCLE SPORTS NUTRITION, a California)
28 corporation,)
Defendant.)

Case No. RG13700044
~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT
Dept:

1 **1. INTRODUCTION**

2 A. ENVIRONMENTAL RESEARCH CENTER ("ERC" or "Plaintiff") is a citizen
3 enforcer of California Health and Safety Code § 25249.6 *et seq.* ("Proposition 65") and is a non-
4 profit corporation organized under California's Non-Profit Public Benefit Corporation Law.

5 B. JOE WELLS ENTERPRISES, INC. is a California Corporation that does business
6 as (dba) MAX MUSCLE SPORTS NUTRITION, and they are referred to collectively
7 hereinafter as "Wells" or "Defendant". "Parties" means ERC and Wells only. ERC and Wells
8 are referred to individually as "Party".

9 C. The name of the Products covered under this Consent Judgment are set forth in
10 Exhibit A, attached hereto ("Covered Products").

11 D. On February 27, 1987, the State of California listed the chemical lead as a chemical
12 known to cause reproductive toxicity, pursuant to California Health and Safety Code § 25249.8.

13 E. On October 1, 1992, the State of California listed the chemicals lead and lead
14 compounds as chemicals known to cause cancer, pursuant to California Health and Safety Code
15 § 25249.8.

16 F. ERC alleges that the Covered Products have been sold by Defendant in California
17 since October 26, 2009.

18 G. On October 26, 2012 ERC served Defendant and public enforcement agencies with
19 a document entitled "60-Day Notice" that provided Defendant and the public enforcement
20 agencies with notice alleging that Defendant was in violation of Proposition 65 for failing to
21 warn purchasers and individuals using the Covered Products that such use exposes them to lead,
22 a chemical known to the State of California to cause cancer and/or reproductive toxicity
23 ("Proposition 65 Notice"). A copy of the Proposition 65 Notice is attached hereto as Exhibit B.

24 H. Concurrent with the filing of this Consent Judgment, ERC has filed a Complaint
25 against Defendant in the Alameda County Superior Court (the "Action"), alleging violations of
26 Proposition 65, based on the Proposition 65 Notice. The Action is brought by ERC in the public
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28

1 interest at least sixty (60) days after ERC provided notice of the alleged Proposition 65 violations
2 to Defendant and the public enforcement agencies and none of the public enforcement agencies
3 had commenced and/or begun diligently prosecuting an action against Defendant for such
4 violations.

5
6 I. This Consent Judgment shall have no application to Covered Products which are
7 manufactured, distributed or sold by Defendant exclusively outside of the State of California.

8 J. Defendant denies the material, factual and legal allegations contained in Plaintiff's
9 Complaint and maintains that all Covered Products that the company sold and distributed in
10 California have been and are in compliance with all laws, including Proposition 65. The Parties
11 enter into this Consent Judgment pursuant to a settlement of disputed claims between them as
12 alleged in the Complaint for the purposes of avoiding prolonged and costly litigation. By
13 execution of this Consent Judgment, Defendant does not admit any facts or conclusions of law
14 suggesting or demonstrating any violations or the applicability of Proposition 65, or any other
15 statutory, common law or equitable requirements relating to the Covered Products. Nothing in
16 this Consent Judgment shall be construed as an admission by Defendant or Plaintiff of any fact,
17 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
18 be construed as an admission by Defendant or Plaintiff of any fact, issue of law, or violation of
19 law.
20

21 K. Except as expressly provided herein, nothing in this Consent Judgment shall
22 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or
23 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
24 responsibilities, and duties of any Party to this Consent Judgment; and,

25 L. The "Effective Date" of this Consent Judgment shall be the date upon which this
26 Consent Judgment is entered by the Court.

27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment only, the Parties stipulate that this Court has

1 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
2 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
3 of this Consent Judgment.

4 **3. INJUNCTIVE RELIEF**

5 **3.1 Warnings**

6 On and after the Effective Date of this Consent Judgment, Defendant shall be
7 permanently enjoined from distributing into the State of California, manufacturing for sale in
8 California, or directly selling in the State of California any Covered Product for which the
9 maximum dose recommended on the label contains more than 0.5 micrograms (mcg) of lead, as
10 calculated in accordance with the formula set forth in Section 3.5, unless Defendant complies
11 with the required warning methods set forth in Section 3.2 and Section 3.4 below. In addition to
12 using the required warning methods in Section 3.3 and Section 3.4, Defendant may also warn by
13 using the optional warning method in Section 3.2. The term "Distributing into California"
14 means to ship any of the Covered Products into California for sale in California or to sell or
15 provide any of the Covered Products to any person or entity Defendant knows intends to or will
16 ship any of the Covered Products into or sell the Covered Products in California.

17 **3.2 Warning Method No. 1 (On-Product Warning)**

18 Defendant shall, at the point of manufacture, prior to shipment to California, or prior to
19 distribution within California, permanently affix to or print on the Covered Product container,
20 cap, label, or unit package (in the form intended for sale to the end user) the following warning:
21

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

24 The words "cancer and" shall be included in the warning only if the maximum recommended
25 dose stated on the Covered Product's label contains in excess of 15 micrograms (mcg) of lead as
26 calculated in accordance with the formula set forth in Section 3.5 below. Inclusion of the word
27 "lead" is optional. The warning above shall be prominently affixed to or printed on the labeling
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1 of each Covered Product intended for sale to a purchaser in the State of California, with such
2 conspicuousness, as compared with other words, statements, designs, or devices on the labeling
3 as to render it likely to be read and understood by an ordinary individual under customary
4 conditions of purchase or use. The warning shall not exceed the language specified in Section
5 3.2 and the warning label shall not be accompanied, on the Covered Product or packaging, by
6 any explanation of Proposition 65, lead, or the "naturally occurring" exemption. The warning
7 shall be at least the same size as the largest of any other health or safety warnings on the
8 container or labeling, and the word "WARNING" shall be in all capital letters and in bold print.
9 The warning shall be contained in the same section of the labeling that states other safety
10 warnings concerning the use of the Covered Product.

11 **3.3 Warning Method No. 2 (Store Warning)**

12 **3.3.1 Warning Signs in Retail Stores in California.** In any "Max Muscle" retail
13 store located in California that offers any of the Covered Products for sale, there shall be
14 displayed one or more warning signs ("Warning Signs").

15 **3.3.3.1 Description of Warning Signs.** The Warning Signs, as shown in
16 Exhibit C, shall be rectangular in shape, be at least 8 ½ inches wide by 11 inches high in size
17 with margins of at least ½ inch and no more than 1 inch at all edges, have a white background,
18 and show the warning message and list of Covered Products in black letters. Larger Warning
19 Signs shall bear substantially the same proportions of type size and spacing as compared to
20 Warning Signs with dimensions of 8 ½ inches by 11 inches. The warning message shall consist
21 of the words "CALIFORNIA PROPOSITION 65 WARNING" in a heading at the top of the
22 Warning Signs in all capital letters, followed by the words "The Products listed below contain
23 chemicals known to the State of California to cause cancer and birth defects or other
24 reproductive harm. For more information regarding Proposition 65, visit
25 <http://www.oehha.ca.gov/prop65.html>." Below the statement set forth above, Defendant shall
26 name each Covered Product in a bullet-point list. To the extent Proposition 65 warnings are
27 required with respect to Defendant's products, in addition to the Covered Products, in Max
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1 Muscle retail stores, the retail store warning signs may include reference to those products as
2 well, provided that in any event each Covered Products is expressly and individually identified in
3 a clear and conspicuous manner.

4 *3.3.3.2 Placement of Warning Signs.* The Warning Signs shall not be
5 covered or obscured; they shall be displayed with such conspicuousness, as compared with other
6 labeling or display, in a manner rendering them likely to be read and understood by an ordinary
7 individual under customary conditions of purchase or use, prior to purchase. At least one of the
8 Warning Signs shall be posted either i) in each aisle, shelf, or display where any of the Covered
9 Products are displayed for sale; or ii) next to the cash register or line for the cash register.

10 *3.3.3.3 Information and Signs Provided to Retailers and Distributors.*
11 Defendant (or its agent) shall provide signs to all Max Muscle franchise retail locations in
12 California. Defendant shall provide signs and instructions by letter ("Warning Instruction
13 Letter," **Exhibit D**) to each distributor or retailer that offers any of the Covered Products for sale
14 in California Max Muscle retail stores, requiring such retailers to post the Warning Signs as
15 described in Section 3.3.3.2 above. The Warning Instruction Letter shall request such retailers to
16 respond with a written acknowledgement that the Warning Signs will be posted within 30 days
17 as indicated in the Warning Instruction Letter. A follow up communication ("Follow-Up
18 Warning Instruction Letter," **Exhibit E**) shall be sent to such retailers who were provided with a
19 Warning Instruction Letter and did not return a timely acknowledgement. The Warning Signs,
20 Warning Instruction Letters, and Follow-Up Warning Instruction Letters shall be delivered in
21 person or via a shipping method that is traceable to ensure such retailers receive the information.
22 Defendant shall maintain files demonstrating compliance with this provision, including the
23 communications provided to and acknowledgments received from such retailers, which
24 Defendant shall provide to ERC within 60 days of the Effective Date. If Defendant learns that
25 any retailer franchisee offering any of the Covered Products for sale in any California Max
26 Muscle retail store does not return an acknowledgement to either the Warning Instruction Letter
27 or Follow-Up Warning Instruction letter, or Defendant learns that a franchisee offering any of
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1 the Covered Products for sale in any California Max Muscle retail store is failing to post or
2 maintain the Warning Signs in accordance with Section 3.3.3.2 above, Defendant (or its agent)
3 shall as soon as is commercially reasonable inspect the retail location, and if no Warning Sign is
4 then posted, post the Warning Sign in such retail location. Defendant agrees that its obligation
5 under this Consent Judgment to inspect its retail locations, and post signs upon the failure of a
6 franchisee to do so, will continue as long as it remains obligated to post warnings. Further,
7 Defendant shall take no action to discourage franchisees from posting signs as required.

8 3.4 Warning Method No. 3 (Website Warning)

9 If any Covered Products are sold via the Internet, then the warning stated in Section 3.2
10 shall be given in conjunction with the sale of the Covered Product via the Internet, and the
11 warning must appear either: (a) on the same web page on which the Covered Product is
12 displayed; (b) on the same web page as the order form for the Covered Product; (c) on the same
13 page as the price for any Covered Product; or (d) on one or more web pages displayed to a
14 purchaser during the checkout process. The warning stated in Section 3.2 shall be used and shall
15 appear in any of the above instances adjacent to or immediately following the display,
16 description, or price of the Product for which it is given in the same type size or larger than the
17 Covered Product description text.

18 3.5 Reformulation and Testing Methodology

19 Defendant may reformulate the Covered Products to reduce the lead content to below
20 levels requiring a Proposition 65 warning, in which case the Parties agree that the Covered
21 Products may be offered for sale in California without the warning discussed in Sections 3.2 to
22 3.4 above. If Defendant contends that a Covered Product has been so reformulated, then at least
23 once each year for three (3) consecutive years, Defendant shall undertake testing of any
24 reformulated Covered Product on which it does not intend to place a warning discussed in
25 Sections 3.2 to 3.4 above. Defendant shall test at least five (5) randomly-selected samples of
26 each such reformulated Covered Product for lead content, to confirm whether the daily dose
27 contains more or less than 0.5 micrograms of lead when the maximum recommended daily dose
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1 is taken as directed on the reformulated Covered Product's label. For purposes of determining
2 whether a warning, if any, is required pursuant to Section 3.1, the second highest lead detection
3 result of the five (5) randomly selected samples of the reformulated Covered Product will be
4 controlling. For purposes of this Consent Judgment, daily lead exposure levels shall be
5 measured in micrograms and shall be calculated using the following formula: micrograms of lead
6 per gram of product, multiplied by grams of product per serving of the product (using the largest
7 serving size appearing on the product's label), multiplied by servings of the product per day
8 (using the largest number of servings in a recommended dosage appearing on the product label),
9 which equals micrograms of lead exposure per day. All testing pursuant to this Consent
10 Judgment shall be performed by an independent third-party laboratory certified by the California
11 Environmental Laboratory Accreditation Program for the analysis of heavy metals or a
12 laboratory that is approved by, accredited by, or registered with the United States Food & Drug
13 Administration for the analysis of heavy metals. The method of selecting samples for testing
14 must comply with the regulations of the Food and Drug Administration as set forth in Title 21,
15 Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for
16 lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and
17 closed-vessel, microwave-assisted digestion employing high-purity reagents¹ or any other testing
18 method agreed upon in writing by the Parties. Nothing in this Consent Judgment shall limit
19 Defendant's ability to conduct, or require that others conduct, additional testing of the Covered
20 Products, reformulated or otherwise, including the raw materials used in their manufacture. This
21 Consent Judgment, including the testing and sampling methodology set forth in this paragraph, is
22 the result of negotiation and compromise, and is accepted by the Parties for purposes of settling,
23 compromising, and resolving issues disputed in the Action, including future compliance by
24 Defendant with this Consent Judgment, and shall not be used for any other purpose, or in any
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28 ¹ See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and Children's Vitamins, J. Agric. Food Chem. 2008, 56, 6892-96.

1 other matter and, except for the purpose of determining future compliance with this Consent
2 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed
3 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g). For
4 the three-year reporting period, Defendant shall provide test results and documentation for any
5 reformulated Covered Product to ERC within thirty (30) working days of Defendant's receipt of
6 the test results, and shall retain all test results and documentation for a period of four (4) years
7 from the date of each test.

8
9 3.6 The requirements set forth above will only apply to any time during which
10 Defendant is a "person in the course of doing business," as that term is defined in Health and
11 Safety Code § 25249.11(b).

12 3.7 The injunctive relief set forth in Sections 3.1 to 3.4 above shall not apply to any of
13 the Covered Products that Defendant put into the stream of commerce before the Effective Date.
14 No later than 10 days after the Effective Date, Defendant shall provide ERC with the last lot
15 number and expiration date for each of the Covered Products in the stream of commerce as of the
16 Effective Date.

17
18 4. **Payment.** In full satisfaction of all potential civil penalties, payment in lieu of
19 civil penalty, and attorneys' fees and costs, Defendant shall make a total payment of \$90,000.00,
20 to be apportioned as follows:

21 4.1 **Civil Penalty Assessment.** \$16,000.00 shall be payable as civil penalties
22 pursuant to California Health and Safety Code section 25249.7 (b) (1). Of this amount,
23 \$12,000.00 shall be payable to the Office of Environmental Health Hazard Assessment
24 ("OEHHA") and \$4,000.00 shall be payable to Environmental Research Center. Defendant shall
25 pay the civil penalty to both OEHHA and ERC in its first payment pursuant to Section 4.4.

26 4.2 **Payment In Lieu of Further Civil Penalties.** \$48,111.00 shall be payable
27 to Environmental Research Center in lieu of further civil penalties, for projects to reduce
28 exposures to toxic chemicals, to increase consumer, worker and/or community awareness of

1 health hazards posed by toxic chemicals, and researching and testing consumer products that
2 may contain Proposition 65 chemicals.

3
4 **4.3 Reimbursement of Plaintiff's Fees and Costs.** \$25,889.00 shall be
5 payable to Environmental Research Center as reimbursement of Plaintiff's reasonable costs,
6 expenses and attorneys' fees incurred as a result of preparing and prosecuting this Action,
7 negotiating a settlement in the public interest, and obtaining required approval from the Office of
8 the California Attorney General and the Superior Court. Of this amount, \$15,251.00 will
9 reimburse ERC's costs and expenses, \$9,990.00 will reimburse ERC's attorney's fees for
10 Michael Freund's work in this Action, and \$648.00 will reimburse attorney's fees for Ryan
11 Hoffman's work in this Action.

12 **4.4 Payment Schedule.** Pursuant to Paragraphs 4.1., 4.2, and 4.3 herein,
13 Defendant agrees to remit the total payment of \$90,000.00 with the schedule for the payment of
14 these funds as follows: within 30 days of the Effective Date, Defendant shall pay the sum of
15 \$45,000.00, of which \$4,000.00 shall be payable to Environmental Research Center and
16 \$12,000.00 shall be payable to OEHHA as a civil penalty. Subsequently, Defendant shall make
17 five (5) successive monthly payments, each due on the 1st day of each month, with the first four
18 payments in the amount of \$10,000.00, and the fifth and final payment in the amount of
19 \$5,000.00. If the 1st day of the month falls on a weekend or state or federal holiday, the
20 respective payment shall be due on the next business day. Except for the payment to OEHHA
21 for the civil penalty, Defendant shall make all other payments by checks payable to
22 "Environmental Research Center" and sent by first-class registered or certified mail, or overnight
23 delivery, to ERC at the address noted in the Notice provision below. ERC shall be responsible
24 to forward the civil penalty check to OEHHA. In the event that any payment owed under this
25 Section 4 is not remitted on or before its due date, all future payments due herein shall become
26 immediately due and payable within 15 days of the missed due date payment.
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5. **Plaintiff's Release of Defendant.** Plaintiff, acting in both its individual capacity

1 on behalf of itself and acting in its representative capacity on behalf of the general public,
2 permanently and fully releases Defendant, its parents, subsidiaries, affiliates (including those
3 companies that are under common ownership and/or common control), shareholders, directors,
4 members, officers, employees, and attorneys, and each entity to whom each of them directly or
5 indirectly distributed or sold the Covered Products, including, but not limited to distributors,
6 wholesalers, customers, retailers, franchisees, and any other person or entity in the course of
7 doing business who distributed, marketed or sold the Covered Products, and excluding
8 Defendant's private label customers, from all claims asserted in the Proposition 65 Notice
9 regarding lead in the Covered Products.
10

11 **6. Limits of Release.** Nothing in this release is intended to apply to any occupational
12 or environmental exposures, as those terms are defined in Cal. Code Regs., tit. 27, §§ 25602(c)
13 and (f), respectively, arising under Proposition 65 nor shall it apply to any of Defendant's
14 products not set forth on Exhibit A to this Consent Judgment.
15

16 **7. Release of Environmental Research Center.** Defendant, by this Consent
17 Judgment, waives all rights to institute any form of legal action against ERC for actions or
18 statements made or undertaken by ERC in the course of seeking enforcement of Proposition 65
19 against Defendant by means of the Proposition 65 Notice.
20

21 **8. Motion for Approval of Consent Judgment/Notice to the California Attorney**
22 **General's Office.** Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a
23 noticed Motion for Approval & Entry of Consent Judgment in the Alameda County Superior
24 Court pursuant to 11 California Code of Regulations §3000, *et seq.* This motion shall be served
25 upon all of the Parties to the Action and upon the California Attorney General. In the event that
26 the Court fails to approve and order entry of the judgment within one (1) year of the Consent
27 Judgment being filed, this Consent Judgment shall become null and void upon the election of any
28 Party as to them and upon written notice to all of the Parties to the Action pursuant to the notice
provisions herein. Defendant and ERC shall use their best efforts to support entry of this

1 Consent Judgment in the form submitted to the California Attorney General. If the Attorney
2 General or the Court objects in writing to any term in this Consent Judgment, the Parties shall
3 use their best efforts to resolve the concern in a timely manner, prior to the hearing on the motion
4 to approve this Consent Judgment. If the Attorney General elects to file papers with the Court
5 stating that the People shall appear at the hearing for entry of this Consent Judgment so as to
6 oppose entry of the Consent Judgment, then a Party may withdraw from this Consent Judgment
7 prior to the date of the hearing, with notice to all Parties and the Attorney General, and upon
8 such notice this Consent Judgment shall be null and void and any payments made pursuant to
9 this Consent Judgment shall be promptly returned to Defendant.

11 9. **Severability.** In the event that any of the provisions of this Consent Judgment are
12 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
13 adversely affected.

14 10. **Enforcement.** In the event that a dispute arises with respect to any of the
15 provisions of this Consent Judgment, this Consent Judgment may be enforced pursuant to Code
16 of Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any such
17 dispute shall be awarded all reasonable fees and costs incurred.

19 11. **Governing Law.** The terms of this Consent Judgment shall be governed by the
20 laws of the State of California.

21 12. **Notices.** All correspondence and notices required to be provided under this
22 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail
23 addressed as follows.

24 **FOR ENVIRONMENTAL RESEARCH CENTER:**

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

28 **With copy to:**

1 Michael Bruce Freund
2 Law Offices of Michael Freund
3 1919 Addison Street, Suite 105
4 Berkeley, CA 94704
5 Tel: (510) 540-1992
6 Fax: (510) 540-5543
7 Email: freund1@aol.com

8 **FOR JOE WELLS ENTERPRISES, INC. dba MAX MUSCLE SPORTS**
9 **NUTRITION:**

10 Patrick Sanders, President
11 Max Muscle Retail Store System
12 210 W. Taft Avenue
13 Orange, CA 92865
14 Tel: (714) 456-0700
15 Fax: (714) 456-0725

16 **With copy to:**

17 Joshua A. Bloom
18 Barg Coffin Lewis & Trapp, LLP
19 350 California Street, 22nd Floor
20 San Francisco, CA 94104-1435
21 Ph: (415) 228-5406
22 Fax: (415) 228-5450
23 Email: jab@bcltlaw.com

24 13. **Integration & Modification.** This Consent Judgment, together with the Exhibits
25 hereto which are specifically incorporated herein by this reference, constitutes the entire
26 agreement between the Parties relating to the rights and obligations herein granted and assumed,
27 and supersedes all prior agreements and understandings between the Parties. This Consent
28 Judgment may be modified only upon the written agreement of the Parties.

13. **Counterparts.** This Consent Judgment may be executed in counterparts, each of
which shall be deemed an original, and all of which, when taken together, shall constitute one
and the same document. Execution and delivery of this Agreement by facsimile transmission or
other electronic means shall constitute legal and binding execution and delivery. Photocopies of

1 the executed Agreement shall have the same force and effect as an Agreement bearing original
2 signatures.

3 15. Authorization. The undersigned are authorized to execute this Consent
4 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
5 terms and conditions of this Consent Judgment.
6

7 APPROVED AS TO FORM:

8 DATED: _____ By: _____

9 Michael B. Freund
10 Counsel for ENVIRONMENTAL RESEARCH CENTER

11 DATED: 10/17/13 By: _____

12 Joshua A. Bloom, Barg Coffin Lewis & Trapp, LLP
13 Counsel for JOE WELLS ENTERPRISES, INC. dba MAX
MUSCLE SPORTS NUTRITION

14 APPROVED AS TO SUBSTANCE:

15 DATED: _____ By: _____

16 Chris Heptinstall, Executive Director
17 ENVIRONMENTAL RESEARCH CENTER

18 DATED: 10/10/13 By: _____

19 Patrick Sanders
20 Joe Wells

21 JOE WELLS ENTERPRISES, INC. dba MAX MUSCLE
SPORTS NUTRITION

22 IT IS SO ORDERED

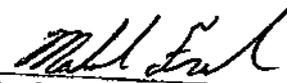
23 Dated: 1/21/14

24 _____
25 Judge of the Superior Court
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1 the executed Agreement shall have the same force and effect as an Agreement bearing original
2 signatures.

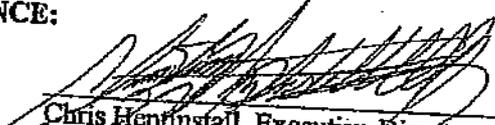
3
4 15. Authorization. The undersigned are authorized to execute this Consent
5 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
6 terms and conditions of this Consent Judgment.

7 **APPROVED AS TO FORM:**

8 DATED: 10/21/13 By: 
9 Michael B. Freund
10 Counsel for ENVIRONMENTAL RESEARCH CENTER

11 DATED: _____ By: _____
12 Joshua A. Bloom, Barg Coffin Lewis & Trapp, LLP
13 Counsel for JOE WELLS ENTERPRISES, INC. dba MAX
14 MUSCLE SPORTS NUTRITION

14 **APPROVED AS TO SUBSTANCE:**

15 DATED: 10/21/2013 By: 
16 Chris Heptinstall, Executive Director
17 ENVIRONMENTAL RESEARCH CENTER

18 DATED: _____ By: _____
19 Joseph Wells
20 JOE WELLS ENTERPRISES, INC. dba MAX MUSCLE
21 SPORTS NUTRITION

22 **IT IS SO ORDERED**

23 Dated: _____
24 _____
25 Judge of the Superior Court

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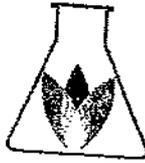
EXHIBIT A

Product List

- **Max Muscle Sports Nutrition Maxpro Advanced Multi Source Protein Pina Colada**
- **Max Muscle Sports Nutrition Quadra Cuts Extreme Thermogenic Ignitor**
- **Max M Sports Nutrition Cleanse & Lean Advanced Body Composition Slenderizing Complex**
- **Max Muscle Sports Nutrition ThermXX Extreme Series Thermogenic Catalyst ES**
- **Max Muscle Sports Nutrition Cleanse & Lean Defining Agent**
- **Max Muscle Sports Nutrition Max Green Synergy Natural Berry Flavor**
- **Max Muscle Sports Nutrition Emerge Body Slenderizing Drink Mix Wild Cherry Tart**
- **Max Muscle Sports Nutrition ThermX Extreme Series Thermogenic Catalyst**
- **Max Muscle Sports Nutrition Max TribuStak Male Hormone Support**
- **Max Muscle Sports Nutrition Joint Relief Synergistic Joint Complex Advanced Joint Support Formula**

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EXHIBIT B
Prop. 65 Notice of Violation



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 26, 2012

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

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

Joe Wells Enterprises, Inc. / Tradestyle: Max Muscle Sports Nutrition

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

**Max Muscle Sports Nutrition Maxpro Advanced Multi Source Protein Pina Colada
- Lead**

Max Muscle Sports Nutrition Quadra Cuts Extreme Thermogenic Ignitor - Lead

Max M Sports Nutrition Cleanse & Lean Advanced Body Composition Slenderizing Complex - Lead

Max Muscle Sports Nutrition ThermXX Extreme Series Thermogenic Catalyst ES - Lead

Max Muscle Sports Nutrition Cleanse & Lean Defining Agent - Lead

Max Muscle Sports Nutrition Max Green Synergy Natural Berry Flavor - Lead

Max Muscle Sports Nutrition Emerge Body Slenderizing Drink Mix Wild Cherry Tart - Lead

Max Muscle Sports Nutrition ThermX Extreme Series Thermogenic Catalyst - Lead

Max Muscle Sports Nutrition Max TribuStak Male Hormone Support - Lead

Max Muscle Sports Nutrition Joint Relief Synergistic Joint Complex Advanced Joint Support Formula - Lead

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

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure: The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 26, 2009, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator 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.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Joe Wells Enterprises, Inc. / Tradestyle: Max Muscle Sports Nutrition and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

Re: Environmental Research Center's Notice of Proposition 65 Violations by Joe Wells Enterprises, Inc. / Tradestyle: Max Muscle Sports Nutrition

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

I, Chris Heptinstall, 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 the Executive Director 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: October 26, 2012

Chris Heptinstall

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 October 26, 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:

Joe Wells Enterprises, Inc. / Tradestyle: Max Muscle
Sports Nutrition
210 W. Taft Avenue
Orange, CA 92865

Joe Wells
(Joe Wells Enterprises, Inc.'s Registered Agent for
Service of Process)
210 W. Taft Avenue
Orange, CA 92865

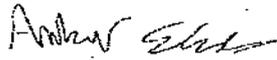
Current President or CEO
Joe Wells Enterprises, Inc. / Tradestyle: Max Muscle
Sports Nutrition
210 W. Taft Avenue
Orange, CA 92865

On October 26, 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

On October 26, 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 October 26, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

Service List

- District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120
- District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95642
- District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965
- District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932
- District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553
- District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531
- District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667
- District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721
- District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988
- District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
940 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, Suite 18000
Los Angeles, CA 90012
- District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney, Marin County
3501 Civic Center Drive, 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
550 W. Main 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
Post Office Box 1131
Salinas, CA 93902
- 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 West Civic Center Drive
Santa Ana, CA 92701
- 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
3960 Orange Street
Riverside, CA 92501
- District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814
- 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, Suite 1300
San Diego, CA 92101
- District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103
- District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
1035 Palm St, 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
1112 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
1355 West Street
Redding, CA 96001
- 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 95354
- 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 Blvd., Room 224
Visalia CA 93291
- District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370
- District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009
- District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695
- District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901
- Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012
- San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101
- San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102
- San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

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EXHIBIT C: Warning Sign

(For use if Joe Wells uses Store Warnings pursuant to Section 3.3)

(See Attached)

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CALIFORNIA PROPOSITION 65 WARNING

THE PRODUCTS LISTED BELOW CONTAIN CHEMICALS
KNOWN TO THE STATE OF CALIFORNIA TO CAUSE
CANCER AND BIRTH DEFECTS OR OTHER
REPRODUCTIVE HARM. FOR MORE INFORMATION
REGARDING PROPOSITION 65, VISIT
<http://www.oehha.ca.gov/prop65.html>.

- Max Muscle Sports Nutrition Maxpro Advanced Multi Source Protein Pina Colada
- Max Muscle Sports Nutrition Quadra Cuts Extreme Thermogenic Ignitor
- Max M Sports Nutrition Cleanse & Lean Advanced Body Composition Slenderizing Complex
- Max Muscle Sports Nutrition ThermXX Extreme Series Thermogenic Catalyst ES
- Max Muscle Sports Nutrition Cleanse & Lean Defining Agent
- Max Muscle Sports Nutrition Max Green Synergy Natural Berry Flavor
- Max Muscle Sports Nutrition Emerge Body Slenderizing Drink Mix Wild Cherry Tart
- Max Muscle Sports Nutrition ThermX Extreme Series Thermogenic Catalyst
- Max Muscle Sports Nutrition Max TribuStak Male Hormone Support
- Max Muscle Sports Nutrition Joint Relief Synergistic Joint Complex Advanced Joint Support Formula

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EXHIBIT D: Letter to Retailers and Distributors

(For use if Joe Wells uses Store Warnings pursuant to Section 3.3)

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

Joe Wells, Enterprises, Inc. (Joe Wells) 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 Max Muscle retail locations in California.

Under the terms of this Consent Judgment, Joe Wells is providing the enclosed warning sign to you so that they can be posted in Max Muscle retail stores. 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. At least one of the warning signs shall be posted either (i) in each aisle, shelf, or display where the product at issue is displayed for sale, or (ii) next to the cash register or line for the cash register.

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 Joe Wells 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 Patrick Sanders.

Acknowledged by:

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

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EXHIBIT E: Follow-Up Letter to Retailers and Distributors

(For use if Joe Wells uses In-Store warnings pursuant to Section 3.3)

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

On [Date], Joe Wells Enterprises, Inc. (Joe Wells) 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 Joe Wells 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 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. At least one of the warning signs shall be posted either (i) in each aisle, shelf, or display where the product at issue is displayed for sale, or (ii) next to the cash register or line for the cash register.

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 Joe Wells 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 Patrick Sanders.

Acknowledged by:

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