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**FILED**  
**ALAMEDA COUNTY**

SEP - 4 - 2014

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

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Attorneys for Defendant  
VICTUS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH  
CENTER, a California non-profit  
corporation,

Plaintiff,

v.

VICTUS, INC.

Defendants.

CASE NO. RG13703466

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT; [PROPOSED]  
ORDER**

Health & Safety Code § 25249.5 et seq.

Action Filed: October 31, 2013  
Trial Date: None set

1 **1. INTRODUCTION**

2 1.1 On October 31, 2013, Plaintiff Environmental Research Center (“ERC”), a non-  
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing  
4 a Complaint for Injunctive and Declaratory relief and Civil Penalties (the “Complaint”)  
5 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
6 (“Proposition 65”), against Victus, Inc. (“Victus” or “Defendant”). In this action, ERC alleges  
7 that the products manufactured, distributed or sold by Victus, as more fully described below,  
8 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and  
9 Plaintiff further alleges that such products expose consumers at a level requiring a Proposition  
10 65 warning. These products are: Victus, Inc. Enterex Powder Vanilla and Victus, Inc. Enterex  
11 Powder Strawberry (collectively, “Covered Products”). ERC and Victus are referred to herein  
12 individually as a “Party” or collectively as the “Parties.” In the course of ERC’s investigation,  
13 ERC also tested several other Victus products (including Enterex Protein Powder 275g, Enterex  
14 Kidz Vanilla 8 fl. oz., Enterex Diabetic Vanilla 8 fl. oz., Enterex Diabetic Strawberry 8 fl. oz.,  
15 and Enterex Diabetic Chocolate 8 fl. oz.), the results of which were non-detect for lead, except  
16 for the Enterex Protein Powder, which Plaintiff reported contained lead at levels below the  
17 Proposition 65 threshold.  
18

19 1.2 ERC is a California non-profit corporation dedicated to, among other causes,  
20 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
21 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
22 encouraging corporate responsibility.

23 1.3 Victus is a business entity that employed ten or more persons. Victus arranges  
24 the manufacture, distribution and sale of the Covered Products.

25 1.4 The Complaint is based on allegations contained in ERC’s Notice of Violations,  
26 dated May 17, 2013, that was served on the California Attorney General, other public  
27

1 enforcers, and Victus. A true and correct copy of the Notice of Violations is attached as Exhibit  
2 A. More than 60 days have passed since the Notice of Violations was mailed, and no  
3 designated governmental entity has filed a complaint against Victus with regard to the Covered  
4 Products or the alleged violations.

5       1.5     ERC's Notice of Violations and the Complaint allege that use of the Covered  
6 Products exposes persons in California to lead without first providing clear and reasonable  
7 warnings in violation of California Health and Safety Code section 25249.6. The Parties have  
8 entered into this Consent Judgment in order to settle, compromise and resolve disputed claims  
9 and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment shall  
10 constitute or be construed as an admission by any of the Parties, or by any of their respective  
11 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
12 affiliates, franchises, licensees, customers, suppliers, distributors, wholesalers, or retailers.  
13 Except for the representations made above, nothing in this Consent Judgment shall be  
14 construed as an admission by Victus or ERC of any fact, issue of law, or violation of law, nor  
15 shall compliance with this Consent Judgment be construed as an admission by Victus or ERC  
16 of any fact, issue of law, or violation of law, at any time, for any purpose.

17  
18       1.6     Except as expressly set forth herein, nothing in this Consent Judgment shall  
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
20 other or future legal proceeding unrelated to these proceedings.

21       1.7     The Effective Date of this Consent Judgment is the date on which it is entered as  
22 a Judgment by this Court.

## 23 **2. JURISDICTION AND VENUE**

24       For purposes of this Consent Judgment only the Parties stipulate that this Court has  
25 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
26 over Victus as to the acts alleged in the Complaint, that venue is proper in Alameda County, and  
27

1 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
2 claims which were or could have been asserted in his action based on the facts alleged in the  
3 Notice of Violations and the Complaint.

4  
5 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

6 **3.1** Beginning on the Effective Date, Victus shall not manufacture for sale in the  
7 State of California, distribute into the State of California, or directly sell in the State of  
8 California, any Covered Products which expose a person to a daily dose of lead more than 0.5  
9 micrograms per day when the maximum suggested dose is taken as directed on the Covered  
10 Product's label, unless each such unit of the Covered Product (1) qualifies as a "Reformulated  
11 Covered Product" under Section 3.3, or (2) meets the warning requirements under Section 3.2.  
12 Within 30 days following the Effective Date, Victus shall contact each of the distributors,  
13 franchisees, and retailers it reasonably believes distribute or sell the Covered Products in  
14 California, or whom Victus reasonably believes may have distributed or sold the Covered  
15 Products in California on or after May 17, 2012, and instruct that all sales and distribution of  
16 such Covered Products in California cease immediately. As of the Effective Date, Victus has  
17 voluntarily ceased known sales of the Covered Products in California, and has contacted each  
18 of the distributors, franchisees, and retailers it reasonably believes have distributed or sold the  
19 Covered Products in California, or whom Victus reasonably believes may have distributed or  
20 sold the Covered Products in California on or after May 17, 2012, and has instructed that all  
21 sales and distribution of such Covered Products in California cease immediately.

22  
23 **3.2 Clear and Reasonable Warnings**

24 If Victus provides a warning for Covered Products pursuant to Section 3.1, Victus must  
25 provide the following warning:  
26  
27

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

4 Victus shall use the term "cancer" in the warning only if the maximum daily dose recommended  
5 on the label contains more than 15 micrograms of lead as determined pursuant to the quality  
6 control methodology set forth in Section 3.4. The words "California Proposition 65" may be  
7 included at Defendant's option.  
8

9 Any warnings Victus provides must be placed on all of the following: (1) on Defendant's  
10 checkout page on their website for California consumers; (2) on Defendant's insert in boxes of  
11 Covered Products shipped to California; (3) on Defendant's receipt/invoice in boxes of Covered  
12 Products shipped to California; and (4) on Defendant's products in Retail stores in California  
13 which are manufactured or distributed for sale in California or directly sold in California on or  
14 after the Effective Date. No other statements about Proposition 65 or lead may accompany the  
15 warning and Victus shall not provide any general or "blanket" warnings regarding Proposition 65.  
16

17 (1) In the website warning, Victus shall identify each Covered Product.  
18

19 (2) Regarding the insert warnings, Victus and/or its distributor shall provide  
20

21 one insert warning for each box of products going to a California consumer. The insert  
22 warning shall be a minimum of 5 inches x 7 inches. The insert warning shall identify each  
23 Covered Product that requires a warning.

24 (3) For the receipt/invoice warnings, the receipt/invoice shall identify each Covered Product  
25 and be present on the front of the receipt/invoice.

26 Victus must display the above warnings with such conspicuousness, as compared with  
27 other words, statements, or design of the label or container, as applicable, to render the warning  
28

1 likely to be read and understood by an ordinary individual under customary conditions of purchase  
2 or use of the product. See Exhibits B, C, and D for examples of the warning as it will appear on  
3 these items.

### 4 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

5 A Reformulated Covered Product is one for which the maximum recommended daily  
6 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the  
7 quality control methodology described in Section 3.4. As used in this Consent Judgment, "no  
8 more than 0.5 micrograms of lead per day" means that the samples of the testing performed by  
9 Victus under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead (with  
10 daily exposure calculated pursuant to Section 3.4 of this Consent Judgment). For products that  
11 cause exposures in excess of 0.5 micrograms of lead per day, Victus shall provide the warning  
12 set forth in Section 3.2. For purposes of determining which warning, if any, is required  
13 pursuant to Section 3.2, the highest lead detection result of the five (5) randomly selected  
14 samples of the Covered Products manufactured for sale or distribution to consumers in  
15 California taken pursuant to Section 3.4.4 will be controlling.  
16

### 17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** For purposes of this Consent Judgment, daily lead exposure levels shall  
19 be measured in micrograms, and shall be calculated using the following formula: micrograms  
20 of lead per gram of product, multiplied by grams of product per serving of the product (using  
21 the largest serving size appearing on the product label), multiplied by servings of the product  
22 per day (using the largest number of servings in a recommended dosage appearing on the  
23 product label), which equals micrograms of lead exposure per day.

24 **3.4.2** All testing pursuant to this Consent Judgment shall be performed using a  
25 laboratory method that complies with the performance and quality control factors appropriate  
26 for the method used, including limit of detection, limit of qualification, accuracy, and precision  
27 and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
28

1 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
2 method subsequently agreed upon in writing by the Parties.

3           **3.4.3** All testing pursuant to this Consent Judgment shall be performed by an  
4 independent third-party laboratory certified by the California Environmental Laboratory  
5 Accreditation Program for the analysis of heavy metals or an independent third-party laboratory  
6 that is registered with the United States Food & Drug Administration for the analysis of heavy  
7 metals. Victus may test the Covered Products if Victus is a qualified laboratory as described  
8 above. Nothing in this Consent Judgment shall limit Defendant's ability to conduct, or require  
9 that others conduct, additional testing of the Covered Products, including the raw materials  
10 used in their manufacture.

11           **3.4.4** Victus shall arrange, for at least four (4) consecutive years after the  
12 Effective Date and at least once per year, for the lead testing of five (5) randomly selected  
13 samples of each Covered Product manufactured for sale or distribution to consumers in  
14 California in the form intended for sale to the end-user to be distributed or sold to California.  
15 Victus shall continue testing of the Covered Products pursuant to the provisions of this Section  
16 so long as the Covered Products are sold in California or sold to a third party for retail sale in  
17 California. If tests conducted pursuant to this Section demonstrate that no warning is required  
18 for a Covered Product during each of four (4) consecutive years after the Effective Date, then  
19 the testing requirements of this Section will no longer be required as to that Covered Product.  
20 However, if after the four-year period Victus changes ingredient suppliers for any of the  
21 Covered Products and/or reformulates any of the Covered Products, Victus shall test that  
22 Covered Product at least once after such change is made. Victus will maintain results from  
23 sampling of Covered Products manufactured for sale or distribution to consumers in California  
24 pursuant to this Section for up to four years after the sampling results are received. Upon  
25 receipt of a reasonable request from ERC, and within ten (10) working days of receipt of such a  
26  
27  
28

1 request, Victus will provide results from sampling conducted pursuant to this Section to ERC.  
2 Any sampling results provided to ERC pursuant to this Section shall be deemed and treated by  
3 ERC as confidential information, and will not be disclosed to any member of the public or  
4 other third parties, pursuant to the terms of the confidentiality agreement entered into by the  
5 Parties.

6 3.4.5 The testing requirements discussed in Section 3.4 are not applicable to  
7 any Covered Product for which Victus has provided the warning as specified in Section 3.2.  
8

#### 9 4. SETTLEMENT PAYMENT

10 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
11 penalties, attorney's fees, and costs, Victus shall make a total payment by check of  
12 \$65,750.00 within ten (10) business days of receiving the Notice of Entry of Judgment. Said  
13 payment shall be for the following:

14 4.1.1 \$4,384.00 shall be payable as civil penalties pursuant to California Health  
15 and Safety Code section 25249.7(b)(1). Of this amount, \$3,288.00 shall be payable to the Office  
16 of Environmental Health Hazard Assessment ("OEHHHA") and \$1,096.00 shall be payable to  
17 Environmental Research Center. California Health and Safety Code section 25249.12(c)(1) &  
18 (d). Victus shall send both civil penalty payments to ERC's counsel who will be responsible for  
19 forwarding the civil penalty to OEHHHA and Environmental Research Center.

20 4.1.2 \$33,136.00 shall be payable to Environmental Research Center as  
21 reimbursement to ERC for (A) reasonable costs associated with the enforcement of Proposition  
22 65 and other costs incurred as a result of work in bringing this action; and (B) \$6,580.00 shall be  
23 payable to Environmental Research Center in lieu of further civil penalties, for the day-to-day  
24 business activities such as (1) continued enforcement of Proposition 65, which includes work,  
25 analyzing, researching and testing consumer products that may contain Proposition 65 chemicals,  
26 focusing on the same or similar type of ingestible products that are the subject matter of the  
27

1 current action; (2) the continued monitoring of past consent judgments and settlements to ensure  
2 companies are in compliance with Proposition 65; and (3) giving a donation to address reducing  
3 toxic chemical exposures in California.

4           4.1.3 \$21,105.00 shall be payable to Michael Freund as reimbursement of  
5 ERC's attorney's fees. \$545.00 shall be payable to Ryan Hoffman as reimbursement of ERC's  
6 attorney's fees.

7           4.2 Victus shall mail or deliver the payments described in this Section by check to  
8 Michael Freund & Associates. Victus will be provided with taxpayer identification information  
9 to enable Victus to process the payments.

## 10 **5. MODIFICATION OF CONSENT JUDGMENT**

11           5.1 This Consent Judgment may be modified only (1) by written stipulation of the  
12 Parties or pursuant to Section 5.4 and (2) upon entry by the Court of a modified Consent  
13 Judgment.

14           5.2 If Victus seeks to modify this Consent Judgment under Section 5.1, then Victus  
15 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and  
16 confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
17 written notice to Victus within thirty (30) days of receiving the Notice of Intent. If ERC  
18 notifies Victus in a timely manner of ERC's intent to meet and confer, then the Parties shall  
19 meet and confer in good faith as required in this Section. The Parties shall meet in person  
20 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30)  
21 days of such meeting, if ERC disputes the proposed modification, ERC shall provide to Victus  
22 a written basis for its position. The Parties shall continue to meet and confer for an additional  
23 thirty (30) days in an effort to resolve any remaining disputes. The Parties may agree in writing  
24 to different deadlines for the meet-and-confer period.  
25  
26  
27  
28

1           5.3     In the event that Victus initiates or otherwise requests a modification under  
2 Section 5.1, Victus shall reimburse ERC its costs and reasonable attorney's fees for the time  
3 spent in the meet-and-confer process and filing and arguing a joint motion or application in  
4 support of a modification of the Consent Judgment.

5           5.4     Where the meet-and-confer process does not lead to a joint motion or  
6 application in support of a modification of the Consent Judgment, then either Party may seek  
7 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
8 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
9 means a party who is successful in obtaining relief more favorable to it than the relief that the  
10 other party was amenable to providing during the Parties' good faith attempt to resolve the  
11 dispute that is the subject of the modification.

12  
13 **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT  
14     JUDGMENT**

15           6.1     This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
16 this Consent Judgment.

17           6.2     Only after it complies with Section 15 below may any Party, by motion or  
18 application for an order to show cause filed with this Court, enforce the terms and conditions  
19 contained in this Consent Judgment.

20           6.3     If ERC alleges that any Covered Product manufactured or distributed for sale in  
21 California, or directly sold in California, on or after the Effective Date fails to qualify as a  
22 Reformulated Covered Product (for which ERC alleges that no warning has been provided),  
23 then ERC shall inform Victus in a reasonably prompt manner of its test results, including  
24 information sufficient to permit Victus to identify the Covered Products at issue. Victus shall,  
25 within thirty days following receipt of such notice, provide ERC with testing information, from  
26 an independent third-party laboratory meeting the requirements of Sections 3.4.2 and 3.4.3,  
27

1 demonstrating Defendant's compliance with the Consent Judgment, if warranted. The Parties  
2 shall first attempt to resolve the matter prior to ERC taking any further legal action.

3 **7. APPLICATION OF CONSENT JUDGMENT**

4 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
5 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
6 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
7 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
8 application to Covered Products which are manufactured, distributed or sold exclusively outside  
9 the State of California. This Consent Judgment shall terminate without further action by any Party  
10 when Victus no longer (1) distributes the Covered Products for sale in California, nor directly  
11 sells the Covered Products to consumers in California, and (2) all of such Covered Products  
12 previously distributed for sale in California have reached their expiration dates.

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

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

1 any of them (collectively, "Released Parties"), from any and all claims, actions, causes of  
2 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that  
3 could have been asserted, as to any alleged violation of Proposition 65 arising from the failure  
4 to provide Proposition 65 warnings on the Covered Products regarding lead.

5       8.2 ERC, on behalf of itself only, hereby releases and discharges the Released  
6 Parties from all known and unknown claims for alleged violations of Proposition 65, or for any  
7 other statutory or common law claims arising from or relating to alleged exposures to lead in  
8 the Covered Products as set forth in the Notice of Violation. It is possible that other claims not  
9 known to the Parties arising out of the facts alleged in the Notice of Violation or the Complaint  
10 and relating to the Covered Products will develop or be discovered. ERC, on behalf of itself  
11 only, acknowledges that this Consent Judgment is expressly intended to cover and include all  
12 such claims, including all rights of action therefore. ERC has full knowledge of the contents of  
13 California Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the  
14 claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless  
15 waives California Civil Code section 1542 as to any such unknown claims. California Civil  
16 Code section 1542 reads as follows:  
17

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

23  
24 ERC, on behalf of itself only, acknowledges and understands the significance and  
25 consequences of this specific waiver of California Civil Code Section 1542.  
26  
27  
28

1           **8.3** Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures  
3 to lead in the Covered Products as set forth in the Notices of Violation and the Complaint.

4           **8.4** Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65; nor shall it apply to any of Defendant's  
6 products other than the Covered Products.

7           **8.5** Nothing in Section 8 shall affect or limit any Party's right to seek to enforce the  
8 terms of this Consent Judgment.

9           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12           **10. GOVERNING LAW**

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

15           **11. PROVISION OF NOTICE**

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

19           **FOR ENVIRONMENTAL RESEARCH CENTER:**

20           Chris Heptinstall, Executive Director  
21 Environmental Research Center  
22 3111 Camino Del Rio North, Suite 400  
23 San Diego, CA 92108

24           With a copy to:

1 Michael Freund (SBN 99687)  
2 Law Office of Michael Freund  
3 1919 Addison Street, Suite 105  
4 Berkeley, California 94704-1101  
5 Telephone: (510) 540-1992  
6 Facsimile: (510) 540-5543  
7 freund1@aol.com

8 **FOR VICTUS, INC.:**

9 Enrique J. Lopez, Co-President  
10 Victus, Inc.  
11 4918 SW 79th Court  
12 Miami, Florida 33155

13 With a copy to:

14 Squire Sanders (US) LLP  
15 Chris M. Amantea (SBN 147339)  
16 Adrienne R. Salerno (SBN 258153)  
17 555 South Flower Street, 31st Floor  
18 Los Angeles, California 90071  
19 Tel: (213) 624-2500  
20 Fax: (213) 623-4581

21 **12. COURT APPROVAL**

22 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
23 void and have no force or effect.

24 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)  
25 and with Title II of the California Code Regulations, Section 3003.

26 **13. EXECUTION AND COUNTERPARTS**

27 This Consent Judgment may be executed in counterparts, which taken together shall be  
28 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as  
the original signature.

1 **14. DRAFTING**

2 The terms of this Consent Judgment have been reviewed by the respective counsel for the  
3 each Party to this Settlement prior to its signing, and each Party has had an opportunity to fully  
4 discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and  
5 construction of this Consent Judgment entered thereon, the terms and provisions shall not be  
6 construed against any Party.  
7

8 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

9  
10 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
11 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to  
12 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of  
13 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is  
14 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As  
15 used in the preceding sentence, the term "prevailing party" means a party who is successful in  
16 obtaining relief more favorable to it than the relief that the other party was amenable to providing  
17 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement  
18 action.  
19  
20

21 **16. ENTIRE AGREEMENT, AUTHORIZATION**

22 **16.1** This Consent Judgment contains the sole and entire agreement and  
23 understanding of the Parties with respect to the entire subject matter herein, and any and all  
24 prior discussions, negotiations, commitments and understandings related hereto. No  
25 representations, oral or otherwise, express or implied, other than those contained herein have  
26  
27

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
2 herein, shall be deemed to exist or to bind any Party.

3       **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
4 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
5 explicitly provided herein, each Party shall bear its own fees and costs.

6  
7 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
8 **CONSENT JUDGMENT**

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

12       (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
13 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
14 been diligently prosecuted, and that the public interest is served by such settlement; and

15       (2) Make the findings pursuant to California Health and Safety Code section  
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.  
17  
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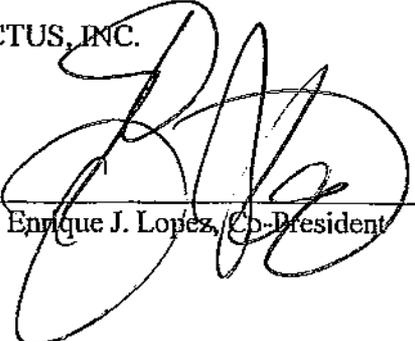
19  
20 **IT IS SO STIPULATED:**  
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26  
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28

1 Dated: 4/28/, 2014

ENVIRONMENTAL RESEARCH  
CENTER

2  
3  
4 By:   
Chris Heplinstall, Executive Director

5  
6 Dated: 4/29/, 2014

7 VICTUS, INC.  
8  
9 By:   
10 Enrique J. Lopez, Co-President

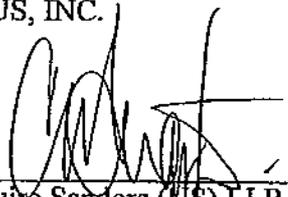
11  
12 APPROVED AS TO FORM:

13 Dated: 4/30/, 2014

14 ENVIRONMENTAL RESEARCH  
CENTER  
15  
16  
17 By:   
18 Michael Freund (SBN 99687)  
19 Michael Freund & Associates  
20 1919 Addison Street, Suite 105  
21 Berkeley, California 94704-1101  
22 Telephone: (510) 540-1992  
23 Facsimile: (510) 540-5543  
24 freund1@aol.com

1 Dated: 4/30, 2014

VICTUS, INC.

2  
3  
4 By: 

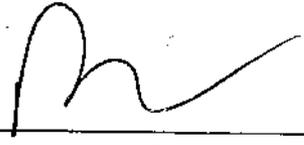
Squire Sanders (US) LLP  
Chris M. Amantea (SBN 147339)  
Adrienne R. Salerno (SBN 258153)  
555 South Flower Street, 31st Floor  
Los Angeles, California 90071  
Tel: (213) 624-2500  
Fax: (213) 623-4581

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**JUDGMENT**

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

Dated: 9/4, 2014

  
\_\_\_\_\_  
Judge of the Superior Court

**Robert D. McGuinness**

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# **EXHIBIT A**

LAW OFFICE OF  
MICHAEL FREUND

RYAN HOFFMAN  
ATTORNEY AT LAW  
1919 ADDISON STREET, SUITE 105  
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992  
FAX (510) 540-5543  
EMAIL RRHOFFMA@GMAIL.COM

May 17, 2013

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

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

**Victus, Inc.**

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

**Victus Inc. Enterex Powder Vanilla – Lead  
Victus Inc. Enterex Powder Strawberry -- 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 May 17, 2010, 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.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Ryan Hoffman

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Victus, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Victus, Inc.**

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 chemicals that are the subject of the notice.

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

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

Dated: May 17, 2013

  
\_\_\_\_\_  
Ryan Hoffman

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

May 17, 2013

Page 4

**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 May 17, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Victus, Inc.  
4918 SW 74<sup>th</sup> Ct  
Miami, FL 33155

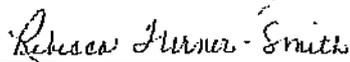
Carlos Fernandez  
(Victus, Inc.'s Registered  
Agent for Service of Process)  
4918 SW 74<sup>th</sup> CT.  
Miami, FL 33155

On May 17, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on May 17, 2013, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Rebecca Turner-Smith

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 17, 2013  
Page 5

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 <sup>nd</sup> 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 <sup>rd</sup> 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 3rd 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> 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	

**EXHIBIT B**

Search

My SHOPPING CART 1 Item | Subtotal: \$74.46

TEST PERSON  
Client #2

- Shop products by
- Line
- Trim
- Active
- Well
- Performance Elite
- Definite Difference
- Benefit
- Type
- Top Sellers
- All Products
- Sales Aids
- Accessories
- Auto Ship
- Quick Order Form
- Order Management
- FAQs
- Nutritional Glossary
- Endorsers
- SciMed Board

Home > Shop > Shampoo Card > Checkout > Order Summary

### Order Checkout

Item #	Item	Option	Qty	Retail	Total
74462			1		
					Retail Subtotal
					-40% Discount
					Subtotal
					Shipping
					Tax
					<b>TOTAL:</b>

Sales Tax is based on the destination state and the products being shipped.

The business volume for this order is

If you have any concerns about this order, call our toll-free line at 1.800.542.4800

NOTICE: This product is subject to the reporting requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) of the State of California. In accordance with the requirements of this regulation the following warning is provided:

**\*California Proposition 65 WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.\***

#### Shipping Information:

Shipping to:  
 TEST CALIFORNIA  
 1500 SOUTH 10TH ST  
 SAN JOSE, CA 95112

#### Shipping method:

Standard Shipping - \$7.45 (estimated)

#### Delivery Information:

If order is placed by 1 PM CT, then order should arrive by .  
 If order is placed after 1 PM CT, then order should arrive by .

For complete details on shipping options for Alaska and Hawaii, [click here](#).

#### Billing method:

Email:

Credit Card **VISA**  M/C  D/C  A/C  Discover

Credit Card Number:

Expiration:

eCheck (formerly Check-by-Phone)

Select Account:

Check Number:

I understand that funds may be withdrawn from my account immediately when payment is issued. [Terms and Conditions](#)

[How to set up eCheck account](#)

Please confirm that all information on this page is correct. When you click the submit button, you certify that all information is correct, you are placing the order and payment will be collected.



\*This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

## **EXHIBIT C**

**NOTICE:** This order contains one or more of the following products that are subject to the reporting requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) for the State of California. In accordance with the requirements of this regulation the following warning is provided:

**“WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.”

Affected Victus Products

Enterex Powder Vanilla  
Enterex Powder Strawberry

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**NOTICE:** This order contains one or more of the following products that are subject to the reporting requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) for the State of California. In accordance with the requirements of this regulation the following warning is provided:

**“WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.”

Affected Victus Products

Enterex Powder Vanilla  
Enterex Powder Strawberry

## **EXHIBIT D**

---

**Subject:** Order Confirmation -

**From:**  
**Sent:**  
**To:**  
**Subject:**

Dear EDWARD PERSON:

Thank you for your recent order placement with . Our world-class products are distinctive in quality, efficacy and value, and we hope you'll continue to enjoy the benefits of the products you've ordered. Your order has been processed and will arrive soon at your shipping address.

To maximize your . product results, be sure to use the products correctly and consistently. Here are a few tips to help you enjoy optimal benefits:

- Take a moment to carefully read directions for use for each product you've ordered.
- Use the products as directed, noting when to use the product and if it should be used on an empty stomach or with food, etc.
- If you have questions, call us at we're glad to help!

Your order confirmation number is it was received on will be shipped to the following location:

TEST CALIFORNIA  
1500 SOUTH 10TH ST  
SAN JOSE CA 95112

Your order includes the following items:

Thanks again for your order. Visit today to see the latest news in health and wellness, to place your next order and to take advantage of an .

**\*NOTICE:** This product is subject to the reporting requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) of the State of California. In accordance with the requirements of this regulation the following warning is provided:

"California Proposition 65 WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm."

Please do not reply to this automated email. For more details, please call to speak with a Distributor Support representative.