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SAMIR J. ABDELNOUR (State Bar No. 271636)  
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Attorneys for Defendant  
FAST FORWARD ENERGY, INC.

SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

COUNCIL FOR EDUCATION AND RESEARCH ON TOXICS, a California corporation, acting as a private attorney general in the public interest,  
  
Plaintiff,  
  
v.  
  
BRAD BARRY COMPANY, LTD., et al.  
  
Defendants.

) Case No. BC461182  
)  
) Related to Lead Case No. BC435759  
)  
) CONSENT JUDGMENT AS TO  
) DEFENDANT FAST FORWARD  
) ENERGY, INC.  
)  
) Dept.: 323  
) Judge: Honorable Elihu M. Berle  
) Action Filed: May 9, 2011  
) Trial Date: None Set

**BARG COFFIN LEWIS & TRAPP LLP**  
ATTORNEYS

1           **1. INTRODUCTION**

2           1.1. On May 9, 2011, the Council for Education and Research on Toxics  
3 (“CERT”) filed a complaint in this case for civil penalties and injunctive relief for violations of  
4 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section  
5 25249.6 *et seq.* (“Proposition 65”), in the Superior Court for the County of Los Angeles. The  
6 complaint alleges that sales of coffee products in California has resulted in exposures to  
7 acrylamide at levels requiring a warning in accordance with Proposition 65 requirements, and that  
8 such warnings were not provided as required.

9           1.2. On or about December 27, 2013 CERT served a Proposition 65 60-Day  
10 Notice of Violation (“Notice of Violation”) on Fast Forward Energy, Inc. (“Settling Defendant”)

11           1.3. Settling Defendant has voluntarily agreed to be bound by the terms of this  
12 Consent Judgment.

13           1.4. Settling Defendant has indicated that it wishes to settle any claims that  
14 CERT has asserted and may assert against it in this lawsuit.

15           1.5. Settling Defendant is a corporation that employs more than 10 persons, or  
16 employed 10 or more persons at some time relevant to the allegations of the complaint, and which  
17 manufactures, distributes and/or sells Covered Products in the State of California or has done so  
18 in the past.

19           1.6. For purposes of this Consent Judgment only, the parties stipulate that this  
20 Court has jurisdiction over the allegations of violations contained in CERT’s complaint and  
21 personal jurisdiction over Settling Defendant as to the acts alleged in CERT’s complaint, that  
22 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter this  
23 Consent Judgment as a full and final resolution of all claims which were raised in the complaint  
24 based on the facts alleged therein.

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1           1.7. CERT and Settling Defendant enter into this Consent Judgment as a full  
2 and final settlement of all claims that were raised in the complaint (except as specified in  
3 Paragraph 9.1), arising out of the facts or conduct alleged therein. Settling Defendant has  
4 expressly waived its statute of limitations defenses with respect to the claims alleged in CERT's  
5 complaint. By execution of this Consent Judgment and agreeing to provide the relief and  
6 remedies specified herein, Settling Defendant does not admit any violations of Proposition 65, or  
7 any other law or legal duty. Except as expressly set forth herein, nothing in this Consent  
8 Judgment shall prejudice, waive or impair any right, remedy, or defense that CERT and Settling  
9 Defendant may have in any other or in future legal proceedings unrelated to these proceedings.  
10 However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities,  
11 and duties of the parties under this Consent Judgment.

12           **2. DEFINITIONS**

13           2.1. "Covered Products" means any coffee or coffee products listing coffee as  
14 the first ingredient sold in any establishment in the State of California.

15           2.2. "Effective Date" means the date upon which this Court enters this Consent  
16 Judgment.

17           **3. INJUNCTIVE RELIEF; CLEAR AND REASONABLE WARNINGS**

18           3.1. Settling Defendant shall provide warnings in the manner required by this  
19 Consent Judgment for all Covered Products it manufactures, distributes and/or sells into  
20 California after the Effective Date.

21           3.2. Warning Message. The warning message provided, under the permitted  
22 warning methods, shall be the following:

23           a.                           **WARNING**

24           "Chemicals known to the State of California to cause cancer and  
25 reproductive toxicity, including acrylamide, are present in our coffee  
26 products. Acrylamide is not added to our products, but results from  
27 the roasting of coffee beans. As a result, acrylamide is present in our  
28 brewed coffee products. Your personal cancer risk is affected by a  
wide variety of factors. For more information regarding acrylamide  
see [www.fda.gov](http://www.fda.gov). For more information about acrylamide and  
Proposition 65, visit [www.oehha.ca.gov/prop65/acrylamide.html](http://www.oehha.ca.gov/prop65/acrylamide.html)."

1                   b. Wherever the warning language in this Consent Judgment uses the phrase  
2 “chemical known to the State of California to cause cancer,” Settling Defendant, at its option,  
3 may use either the phrase “chemical known to cause cancer” or “chemical that causes cancer.”

4                   3.3. Warning Method. The warning shall be affixed to or printed on the back of  
5 the package of the Covered Product, in typeface equal to the typeface of other product  
6 information on the label so as to render the warning easily read and understood by an ordinary  
7 individual under customary conditions of purchase or use. Such warnings shall accompany the  
8 Covered Product sold into California beginning no later than sixty (60) days after the Effective  
9 Date.

10                  3.4. Nothing in this Consent Judgment requires that warnings be given for  
11 Covered Products sold outside the State of California, nor for Covered Product sold in California  
12 before the Effective Date.

13                  **4. CIVIL PENALTIES**

14                  4.1. Calculation of Civil Penalties:

15                  4.1.1. A company who violates Proposition 65 shall be liable for civil penalties  
16 not to exceed two thousand five hundred dollars (\$2,500.00) per day for *each violation* in addition  
17 to any other penalty established by law pursuant to Health and Safety Code section 25249.7(b)(1).

18                  4.1.2. In assessing the amount of civil penalties for violations of Proposition 65,  
19 all of the following factors must be considered pursuant to Health and Safety Code Section  
20 25249.7(b)(2):

- 21                   a. The nature and extent of the violation.  
22                   b. The number of, and severity of, the violations.  
23                   c. The economic effect of the penalty on the violator.  
24                   d. Whether the violator took good faith measures to comply with this chapter  
25 and the time these measures were taken.  
26                   e. The willfulness of the violator’s misconduct.  
27                   f. The deterrent effect that the imposition of the penalty would have on both

1 the violator and the regulated community as a whole.

2 g. Any other factor that justice may require.

3 4.2. Settling Defendant has provided proof to CERT's counsel, in the form of  
4 financial statements verified under penalty of perjury, that it is impecunious, *i.e.*, that the  
5 company operated at a loss, that its liabilities exceed its assets, that its manufacturing operations  
6 have been permanently discontinued and that its shareholders are considering its board of  
7 directors' recommendation that it should dissolve, such that payment of a full penalty is not  
8 possible. As a result, the parties have agreed upon a modified settlement amount for civil  
9 penalties in this case. This low settlement amount is based on consideration of all the penalty  
10 factors set forth in Health and Safety Code Section 25249.7(b)(2), taking into account the Settling  
11 Defendant's impecuniousness.

12 **5. PAYMENTS**

13 5.1. Settling Defendant shall pay the total amount identified below in settlement  
14 of this case. The terms of the payment agreement are as follows:

15 Settling Defendant shall pay the total amount of \$16,000.00 ("Settlement Proceeds"),  
16 within thirty (30) days of the Effective Date. Settlement Proceeds shall be made payable to the  
17 Metzger Law Group Attorney-Client Trust Account, and to no other persons, and delivered to  
18 CERT's counsel, Metzger Law Group, 401 E. Ocean Blvd., Suite 800, Long Beach, California  
19 90802-4966. The Settlement Proceeds shall be applied as follows:

20 a. Civil Penalty: Settling Defendants shall pay civil penalties pursuant to  
21 Health and Safety Code Section 25249.7(b) in the amount of \$8,000.00, allocated between CERT  
22 and the State of California as directed by Health & Safety Code Section 25249.12(c)-(d).

23 b. Attorneys' Fees and Costs: Settling Defendant shall pay \$8,000.00 to  
24 reimburse CERT for its attorneys' fees and costs incurred in investigating and litigating this  
25 matter, and negotiating this Consent Judgment on behalf of itself and in the public interest.

26 **6. MODIFICATION OF CONSENT JUDGMENT**

27 6.1. This Consent Judgment may be modified by written agreement of CERT

1 and Settling Defendant, after noticed motion, and upon entry of a modified consent judgment by  
2 the court thereon, or upon motion of CERT or Settling Defendant as provided by law and upon  
3 entry of a modified consent judgment by the court. Before filing an application with the court for  
4 a modification to this Consent Judgment, Settling Defendant may meet and confer with CERT to  
5 determine whether CERT will consent to the proposed modification. If a proposed modification  
6 is agreed, then Settling Defendant and CERT will present the modification to the court by means  
7 of a stipulated modification to the Consent Judgment.

8           6.2. If Proposition 65 or its implementing regulations are changed from their  
9 terms as they exist on the date of entry of judgment, the parties may seek modifications in the  
10 Consent Judgment as follows:

11           a. If the change establishes that warnings for acrylamide in the Covered  
12 Products are not required, Settling Defendant may seek a modification of this Consent Judgment  
13 to conform the judgment to the change in law.

14           b. If the change establishes that the warnings provided by this Consent  
15 Judgment would not comply with the law, either party may seek a modification of the Consent  
16 Judgment to conform the judgment to the change in law.

17           c. If the change would provide a new form or manner of an optional or safe  
18 harbor warning, Settling Defendant may seek a modification to provide a warning in the newly  
19 permitted form, but the modification shall not be granted unless the court finds that the new  
20 warning would not be materially less informative or likely to be seen, read, and understood than  
21 the warnings provided under this Consent Judgment.

22           6.3. If Settling Defendant corresponds in writing to an agency or branch of the  
23 United States Government in connection with the application of Proposition 65 to acrylamide in  
24 the Covered Products, then, so long as such correspondence is not confidential and would be  
25 retrievable by CERT under the Freedom of Information Act, Settling Defendant shall provide  
26 CERT with a copy of such communication as soon as practicable, but not more than 10 days after  
27 sending or receiving the correspondence; provided, however, that this section shall not apply to

1 correspondence to or from trade associations or other groups of which Settling Defendant is a  
2 member.

3 **7. ENFORCEMENT**

4 7.1. CERT may, by motion or application for an order to show cause before this  
5 Court, enforce the terms and conditions contained in this Consent Judgment. In any such  
6 proceeding, CERT may seek whatever fines, costs, penalties, or remedies are provided by law for  
7 failure to comply with the Consent Judgment and where said violations of this Consent Judgment  
8 constitute subsequent violations of Proposition 65 or other laws independent of the Consent  
9 Judgment and/or those alleged in the complaint, CERT is not limited to enforcement of the  
10 Consent Judgment, but may seek in another action, whatever fines, costs, penalties, or remedies  
11 are provided for by law for failure to comply with Proposition 65 or other laws. In any action  
12 brought by CERT alleging subsequent violations of Proposition 65 or other laws, Settling  
13 Defendant may assert all available defenses.

14 **8. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

15 8.1. Each signatory to this Consent Judgment certifies that he or she is fully  
16 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into  
17 and execute the Consent Judgment on behalf of the party represented and legally to bind that  
18 party.

19 **9. CLAIMS COVERED**

20 9.1. This Consent Judgment is a full, final, and binding resolution between  
21 CERT and Settling Defendant, of any violation of Proposition 65 that has been asserted in the  
22 Notice of Violation, up through and including the Effective Date, for failure to provide clear and  
23 reasonable warnings of exposure to acrylamide from the use of the Covered Products, whether  
24 based on actions committed by Settling Defendant or by an entity to whom it distributes or sells  
25 coffee products, and for any franchisee who sells or has sold Covered Products in the State of  
26 California. Compliance with the terms of this Consent Judgment constitutes compliance with  
27 Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in the

1 Notice of Violation.

2 **10. RETENTION OF JURISDICTION**

3 10.1. This Court shall retain jurisdiction of this matter to implement the Consent  
4 Judgment.

5 **11. PROVISION OF NOTICE**

6 11.1. When any party is entitled to receive any notice under this Consent  
7 Judgment, the notice shall be sent by overnight courier service to the person and address set forth  
8 in this Paragraph. Any party may modify the person and address to whom the notice is to be sent  
9 by sending each other party notice by certified mail, return receipt requested. Said change shall  
10 take effect for any notice mailed five days after the date the return receipt is signed by the party  
11 receiving the change.

12 11.2. Notices shall be sent to the following when required:

13 For CERT:

14 Raphael Metzger  
15 Metzger Law Group  
16 401 E. Ocean Boulevard, Suite 800  
17 Long Beach, CA 90802  
18 Telephone: (562) 437-4499  
19 Facsimile: (562) 436-1561

18 For Settling Defendant:

19 Joshua A. Bloom  
20 Barg Coffin Lewis & Trapp LLP  
21 350 California Street, 22<sup>nd</sup> Floor  
22 San Francisco, CA 94104  
23 Telephone: (415) 228-5400  
24 Facsimile: (415) 228-5450

23 With a copy to:

24 Robert C. Bowers  
25 Moore & Van Allen PLLC  
26 100 North Tryon Street, Suite 4700  
27 Charlotte, NC 28202  
28 Telephone: (704) 331-3560  
Facsimile: (704) 339-5860



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**12. COURT APPROVAL**

12.1. This Consent Judgment shall be submitted to the Court for entry by noticed motion. If this Consent Judgment is not approved by the Court, it shall be of no force or effect and may not be used by CERT or Settling Defendant for any purpose.

**13. ENTIRE AGREEMENT**

13.1. This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

**14. EXECUTION IN COUNTERPARTS**

14.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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**IT IS SO STIPULATED:**

Dated: May 2, 2014

METZGER LAW GROUP  
A Professional Law Corporation

By:   
RAPHAEL METZGER, ESQ.

Attorneys for Plaintiff  
COUNCIL ON EDUCATION AND  
RESEARCH ON TOXICS ("CERT")

Dated: \_\_\_\_\_, 2014

BARG COFFIN LEWIS & TRAPP LLP

By: \_\_\_\_\_  
JOSHUA A. BLOOM

Attorneys for Defendant  
FAST FORWARD ENERGY, INC.

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
HON. ELIHU M. BERLE  
Judge of the Superior Court

1 IT IS SO STIPULATED:

2 Dated: \_\_\_\_\_, 2014

METZGER LAW GROUP  
A Professional Law Corporation

3

4

By: \_\_\_\_\_  
RAPHAEL METZGER, ESQ.

5

6

Attorneys for Plaintiff  
COUNCIL ON EDUCATION AND  
RESEARCH ON TOXICS ("CERT")

7

8 Dated: April 30, 2014

BARG COFFIN LEWIS & TRAPP LLP

9

10

By:   
JOSHUA A. BLOOM

11

12

Attorneys for Defendant  
FAST FORWARD ENERGY, INC.

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14

IT IS SO ORDERED, ADJUDGED, AND DECREED:

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Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
HON. ELIHU M. BERLE  
Judge of the Superior Court

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ELECTRONIC PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 401 E. Ocean Blvd., 8<sup>th</sup> Floor, Long Beach, CA 90802.

On May 7, 2014, I served the foregoing document, described as: [PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT FAST FORWARD ENERGY, INC. on the interested parties to this action by submitting an electronic version of the document via FTP upload to LexisNexis/FileAndServe - File & ServeXpress pursuant to the Court's Order.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 7, 2014, at Long Beach, California.

*[Handwritten signature]*

Nina S. Vidal, Declarant

TELEPHONE (562) 437-4499  
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TELECOPIER (562) 436-1561  
WWW.TOXICTORTS.COM

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PRACTICE CONCENTRATED IN TOXIC  
TORT & ENVIRONMENTAL LITIGATION  
OCCUPATIONAL & ENVIRONMENTAL LUNG  
DISEASE, CANCER, AND TOXIC INJURIES

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SERVICE LIST

(CERT vs. Starbucks, Case No. BC435759)

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5 Rachel L. Chanin, Esq.  
6 Arnold & Porter  
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8 San Francisco, CA 94111  
9 (7-Eleven, Inc., BP West Coast Products  
10 LLC, Winchell's Franchising, LLC, Yum Yum  
11 Donut Shops, Inc.)

12  
13 Michele B. Corash, Esq.  
14 Robin S. Stafford, Esq.  
15 Morrison & Foerster  
16 425 Market Street  
17 San Francisco, CA 94105-2482  
18 (Starbucks Corporation, Starbucks Holding  
19 Company, Seattle Coffee Company, Peet's  
20 Operating Company, Inc. (incorrectly sued  
21 herein as Peet's Coffee and Tea, Inc.);  
22 International Coffee & Tea, LLC)

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(Updated 06/14/13 nsv)

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SERVICE LIST

(CERT v. Brad Berry, Case No. BC461182)

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Inc.)

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Robert Falk, Esq.  
Robin Stafford, Esq.  
Travis Brandon, Esq.  
Morrison & Foerster  
425 Market Street  
San Francisco, CA 94105-2482  
(Brad Barry Company, Ltd., Caribou Coffee  
Company, Inc., F. Gavina & Sons, Inc., Green  
Mountain Coffee Roasters, Inc., Illy Caffe  
North America, Inc., International Coffee &  
Tea, Llc, the J.M. Smucker Company, Kraft  
Foods Inc., Massimo Zanetti Beverage USA,  
Inc., Melitta U.S.A., Inc., Nestle USA,  
Inc., Peet's Coffee & Tea, Inc., Rowland  
Coffee Roasters, Inc., Sara Lee Corporation,  
Seattle's Best Coffee Llc, Smucker  
Foodservice, Inc., Starbucks Corporation, TC  
Global, Inc., Vilore Foods Company, Inc., DD  
IP Holder Llc, The Folgers Coffee Company,  
Godiva Chocolatier, Inc., Starbucks Holding  
Company; Kraft Foods Global, Inc.; Appfels  
Coffee, Inc., Coffee Bean International,  
Inc., Dona Mireya, Inc., dba Jones Coffee  
Roasters; Equator Coffee & Teas; Boyer  
Coffee Company; Caffe Ibis, Inc.; The Coca-  
Cola Company; Community Coffee Company,  
Inc.; Copper Moon Coffee, LLC; JBR, Inc.,  
dba Rogers Family Company; Lavazza Premium  
Coffees Corp.; Cascade Coffee, Inc.; Coffee  
Roasters of Arizona, Inc.; Gold Medal  
Products Co.; Millstone Coffee, Inc.; Mother  
Parkers Tea & Coffee, Inc.; Southern Wine  
and Spirits of America, Inc.; Central Coast  
Coffee Roasting Co., Inc.; Eight O'Clock  
Coffee Company; James c. Cannell Coffees,  
Inc. Dba Jim's Organic Coffee; Paradise  
Beverages, Inc. dba Hawaii Coffee Company;  
Regal Commodities; Steep & Brew, Inc.;  
Victor Allen's Coffee, LLC; Napa Valley  
Coffee Roasting Company; Kauai Coffee  
Company LLC; Peerless Coffee Co., Inc., dba  
Adam's Organic Coffees; Montana Coffee  
Traders, Inc.; Falcon Trading Company, Inc.;  
Intelligentsia Coffee & Tea, Inc.; Mayorga  
Coffee, LLC; Hometown Coffee Co.; New  
England Tea and Coffee Co., Inc.; Zavida

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PRACTICE CONCENTRATED IN TOXIC  
TORT & ENVIRONMENTAL LITIGATION  
OCCUPATIONAL & ENVIRONMENTAL LUNG  
DISEASE, CANCER, AND TOXIC INJURIES

- 1 Coffee Company, Inc.; Quartermaine Coffee      Ingredients, Inc.)
- 2 Roasters; S & D Coffee, Inc.; Verve Pacific
- 3 Avenue Café, LLC)      Douglas D. Wirth, Esq.
- 4      Brendan W. Brandt, Esq.      Law Offices of Steven C. Sabbadini
- 5      Andrew Ross      823 North Street
- 6      Varner & Brandt      Woodland, CA 95695
- 7      3750 University Ave., Suite 610      (Puroast Coffee Company, Inc.)
- 8      Riverside, CA 92501      Thomas M. Brown, Esq.
- 9      (Stater Bros. Markets)      Brown White & Newhouse LLP
- 10      J.T. Wells Blaxter, Esq.      333 South Hope Street, 40<sup>th</sup> Floor
- 11      Blaxter Law      Los Angeles, CA 90071
- 12      One Bush St., Suite 650      (Comfort Foods, Inc.)
- 13      San Francisco, CA 94104      Ian K. Boyd, Esq.
- 14      (Whole Foods Market California, Inc.;      Matthew A. Stratton, Esq.
- 15      Allegro Coffee Company)      Harvey Siskind LLP
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- 27      (Cameron's Coffee and Distribution Company)      San Diego, CA 92108
- 28      *Settlement pending*      (Café Calabria Coffee Roasting Company)
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- (Churchill Coffee Company, LLC)
- Megan I. Lennox, Esq.      *Settlement pending*
- Bryan Cave LLP
- Two N. Central Avenue, Suite 2200
- Phoenix, AZ 85004      (Updated 02/05/14 jlp)
- (Co-counsel for Kerry Inc., dba Kerry

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 401 East Ocean Blvd., #800, Long Beach, CA 90802.

On May 7, 2014, I served the foregoing document, described as: [PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT FAST FORWARD ENERGY, INC. on the parties to this action as follows:

X (BY MAIL) I caused copies of such document, enclosed in sealed envelopes, to be deposited in the mail at Long Beach, California with postage thereon fully prepaid to the address listed below. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing set forth in this affidavit to:

Office of the Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550

X (BY E-MAIL) I delivered such document by electronic mail to: Laura J. Zuckerman, Deputy Attorney General, 1515 Clay Street, 20th Floor, Oakland, California 94612 at Laura.Zuckerman@doj.ca.gov, and Dennis A. Ragen, Deputy Attorney General, 110 West A Street, Suite 1100, San Diego, California 92186-5266 at Dennis.Ragen@doj.ca.gov. Said document was transmitted by email transmission, which was reported complete and without error.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the offices of a member of this court, at whose direction service was made.

Executed on May 7, 2014, at Long Beach, California.

[Signature]
Nina S. Vidal, Declarant

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