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AS YOU SOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

AS YOU SOW, a non-profit corporation,

Plaintiff,

vs.

WHOLISTIC BOTANICALS LLC

Defendant.

Case No. CGC-07-468669

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT WHOLISTIC
BOTANICALS LLC. dba
CHRISTOPHER’S ORIGINAL
FORMULAS**

This Consent Judgment is entered into by and between As You Sow (“Plaintiff”), and Wholistic Botanicals LLC, d/b/a Christopher’s Original Formulas. (“Defendant”). This Consent Judgment shall be effective upon entry (the “Effective Date”) by the court. Plaintiff and Defendant (each a “Party” and collectively, “the Parties”) agree to the terms and conditions set forth below.

1. INTRODUCTION

1.1 Plaintiff is a Section 501(c)(3) non-profit foundation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. Plaintiff is based in San Francisco, California and incorporated under the laws of the State of California.

1.2 Defendant directly or indirectly sells finished herbal products for ingestion to California consumers. Plaintiff alleges that certain of these products contain lead, a chemical

1 listed by the State of California as known to cause cancer and reproductive toxicity pursuant to
2 the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), California
3 Health and Safety Code § 25249.5 et seq.; Title 22, California Code of Regulations § 12000 et
4 seq. (the “Products”). For purposes of this Consent Judgment only, each of the Products is
5 deemed to be a “food” within the meaning of Title 22, California Code of Regulations § 12501.

6 **1.3** The Products covered by this Consent Judgment as of the Effective Date are set
7 forth in Exhibit A hereto. Any products not set forth in Exhibit A hereto are not subject to the
8 injunctive provisions herein, except as specifically provided in Section 9: *New Products*, and are
9 not covered by the release of liability set forth in Section 6 herein.

10 **1.4** Pursuant to Health & Safety Code § 25249.8: (a) on February 27, 1987, the State
11 of California listed the chemical lead as a chemical known to cause reproductive toxicity; and (b)
12 on October 1, 1992, the State of California listed the chemicals lead and lead compounds as
13 chemicals known to cause cancer.

14 **1.5** Beginning on August 20, 2007 and again on or about June 24, 2008, Plaintiff
15 served on Defendant and each of the appropriate public enforcement agencies with “60-Day
16 Notices” that provided Defendant and these public enforcement agencies with a notice alleging
17 that Defendant was in violation of Proposition 65 for failing to warn the purchasers and
18 individuals using the Products that use of the Products exposes them to certain chemicals known
19 to the State of California to cause cancer and/or reproductive toxicity (each, a “60-Day Notice”).
20 A copy of each such 60-Day Notice issued to Defendant is attached hereto as Exhibit B.
21 Defendant stipulates for the purpose of this Consent Judgment only that the 60-Day Notices sent
22 to it are adequate to comply with Title 22, California Code of Regulations §12903.

23 **1.6** On October 30, 2007 Plaintiff filed a Complaint (the “Action”) in San Francisco
24 Superior Court, alleging violations of Proposition 65. Plaintiff brings the Action in the public
25 interest. Plaintiff has provided 60-Day Notice(s) to Defendant and the appropriate public
26 enforcement agencies and none of the public enforcement agencies has commenced and begun
27 diligently prosecuting an action against Defendant for such alleged violations.
28

1 **1.7** For purposes of this Consent Judgment, each Party stipulates that venue is proper
2 and that this Court has subject matter jurisdiction over the allegations contained in the Action.
3 Defendant stipulates it employs ten (10) or more employees and employed ten (10) or more
4 employees for one year prior to the date of the first 60-Day Notice Letter. The Parties enter into
5 this Consent Judgment to settle disputed claims between them and to avoid prolonged litigation.
6 By execution of this Consent Judgment, Defendant does not admit any facts, violations of law,
7 conclusions of law, the applicability of Proposition 65, or the applicability or violation of any
8 other law or standard governing warnings or disclosures in connection with the manufacture,
9 packaging, labeling, distribution and/or sale of the Products. Except for the stipulations made in
10 Sections 1.5 and 1.7 by Defendant, nothing in this Consent Judgment shall be construed as an
11 admission by Defendant of any fact, issue of law, conclusion of law, or violation of law, nor shall
12 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
13 of any fact, issue of law, conclusion of law, or violation of law. Except for the stipulations made
14 in this Section 1.7 by Plaintiff, nothing in this Consent Judgment shall be construed as an
15 admission by Plaintiff of any fact, issue of law, conclusion of law, or violation of law, nor shall
16 compliance with this Consent Judgment constitute or be construed as an admission by Plaintiff of
17 any fact, issue of law, conclusion of law, or violation of law.

18 **1.8** Except as expressly provided herein, nothing in this Consent Judgment shall
19 prejudice, waive or impair any right, remedy or defense any Party may have in any other or
20 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
21 responsibilities, and duties of any Party to this Consent Judgment. This Consent Judgment is a
22 full and final settlement of all claims that were raised in the Action, or which could have been
23 raised in the Action arising out of the facts or conduct alleged therein.

24 **2. INJUNCTIVE PROVISIONS**

25 **2.1 Defendant's Duty To Ascertain The Lead Content of Products On Or Before**
26 **Sixty Days Following the Effective Date.** On or before sixty (60) days following the Effective
27 Date, Defendant shall ascertain the concentration of lead in each of the Products, as set forth
28 below, except as provided in Section 9.1, *New Products*.

1 **2.1.1 Lead Testing Protocol.** To ascertain a Product’s concentration of lead,
2 Defendant shall test the Product (or rely on testing of the Product by others provided it is
3 undertaken in the manner set forth herein), using inductively coupled plasma mass spectrometry
4 (“ICP-MS”) under the protocol set forth in EPA Method 6020 or 6020A as set forth in this
5 Section 2.1.

6 **2.1.2 Additional Testing Protocols.** In the event that equally or more accurate
7 testing methods are developed or identified and accepted by the scientific community as accurate
8 enough to allow for detection and quantification of lead to ascertain compliance under this
9 Consent Judgment, any Party shall have the right to move the court to modify this Consent
10 Judgment as set forth in Section 8 herein, to allow testing by such equally or more accurate
11 testing method in addition to the methods authorized herein.

12 **2.1.3 Approved Laboratories.** Product or raw material testing may be
13 undertaken at Defendant’s in-house laboratories or by third-party testing laboratories; however,
14 all third-party laboratory testing shall be performed only at laboratories that are certified,
15 accredited, or registered by an agency of the United States, Canada, California or another State of
16 the United States or Province of Canada, including but not limited to the U.S. Environmental
17 Protection Agency, the U.S. Food and Drug Administration, or the California Department of
18 Health Services, for the purposes of administering the specific protocol used in such testing. If a
19 given agency does not certify specific protocols for testing for lead in dietary supplements, the
20 certification, accreditation or registration customarily bestowed upon laboratories testing dietary
21 supplements or ingredients in dietary supplements for lead in accordance with that agency’s
22 standards shall be required; if no such agency standards exist specifically for dietary supplements,
23 then the standards for foods shall be required.

24 **2.1.4 Sampling Protocol For Lead Content.** In fulfilling its duty to ascertain
25 the concentration of lead in each Product, Defendant may at its option, test (or rely on testing of
26 the Product by others) Representative Samples of the finished Products, or test (or rely on testing
27 of raw materials by others) Representative Samples of each of the raw materials comprising the
28 finished Product(s). Any results relied upon must use the analytical methods and sampling

requirements specified herein, except that a Defendant (or a laboratory conducting tests for Defendant) may modify or adjust an analytical method if necessary to ensure accurate results in light of the nature, composition, quantity, or other characteristic of the test specimen, the nature of the test, or the specific equipment being used to conduct the test so as to enhance the quality and reliability of the test results. If Defendant (or a laboratory conducting tests for Defendant) modifies or adjusts any analytical method specified in this Consent Judgment, in the event of an enforcement action by Plaintiff under this Consent Judgment contesting such modification or adjustment, Defendant shall bear the burden of showing by a preponderance of the evidence that the modification or adjustment was (a) necessary, appropriate and reasonable under the circumstances; and (b) fully consistent with generally accepted scientific principles and practices concerning analytical testing and test methods for Metals in foods, including dietary supplements. The terms of Sections 2 shall apply to all finished Product units listed on Exhibit A if and when such Product units are manufactured by or for Defendant after the Effective Date.

2.1.5 Representative Sampling.

(a) Finished Products. “Representative Sampling” as used herein shall mean with respect to the testing of finished Products, any of the following, at Defendant’s option: (a) testing of two (2) or more samples, each from a different final Product of the most recent manufacturing, labeling or processing lot or batch (“Manufacturing Lot”) of that Product; or (b) testing of one (1) sample from the most recent Manufacturing Lot of a Product, provided that the one sample actually tested is a composite of three (3) or more samples taken from three (3) or more final Products from such Manufacturing Lot of that Product. Each of the three (3) or more samples taken from three (3) or more final Products must be equal to the other samples (e.g., 4 capsules taken from each of three final Products, or 1 gram taken from each of three final Products).

(b) Raw Materials. “Representative Sampling” as used herein shall mean with respect to the testing of raw material, testing of one (1) or more samples from the most recent shipping lot received by Defendant of each raw material comprising the Product, provided that the sample actually tested is a composite of three (3) or more samples from the most recent shipping lot of

1 that raw material. Each of the three (3) or more raw material samples which comprise the
2 composite sample actually tested shall be equal to the other samples.

3 (c) First Two Year's Frequency of Sampling. During each of the two years after the
4 Effective Date, for purposes of documenting compliance with Sections 2.2, 2.4 and 9 of this
5 Consent Judgment after sixty (60) days from the Effective Date, Defendant shall conduct (or have
6 conducted on its behalf) Representative Sampling of each Product manufactured during this time
7 period and meeting the definition of either Section 2.1.5(a) or 2.1.5(b), or any combination of the
8 two, as Defendant shall elect in its sole discretion. The Parties agree that this frequency of
9 Representative Sampling of each Product for the first two years after the Effective Date shall be
10 the minimum amount of sampling required under this Consent Judgment. Defendant shall retain
11 laboratory test data documenting the foregoing Representative Sampling with respect to each
12 Product Defendant ships for sale to California between the Effective Date and the second
13 anniversary of the Effective Date. Such laboratory test data for the initial two year testing period
14 shall be retained for at least four years from the date of testing.

15 (d) Sampling Frequency After Second Anniversary of Effective Date. After the second
16 anniversary of the Effective Date, Defendant shall conduct (or have conducted on its behalf)
17 Representative Sampling on raw materials or finished Products, as the case may be, but
18 Defendant may adjust the frequency of the sampling regime set forth in Section 2.1.5(c). Any
19 adjustments to the sampling regime shall be sufficient to allow Defendant to continue to
20 accurately determine levels of lead in Products or in raw materials. Any adjustments to the
21 sampling regime shall be based upon Defendant's consideration of the following factors: (i)
22 existing data, (ii) the variability of lead levels in a raw material or in a Product, as documented
23 through testing, (iii) the predictability of the distribution of the range of lead levels in a raw
24 material, based on prior laboratory test data, (iv) the amount of a raw material used in a finished
25 Product, and (v) other relevant considerations. In any proceeding to enforce this Consent
26 Judgment, Defendant bears the burden of showing by a preponderance of the evidence that any
27 testing regime adopted under this Section 2.1.5(d) is reasonable and is sufficient to accurately
28 determine lead levels in raw materials or finished Products. This Section 2.1.5(d) governs the

1 frequency of sampling, and does not alter the definitions of Representative Sampling set forth in
2 Sections 2.1.5(a), or (b), or the testing protocols set forth herein. Defendants are not limited to
3 providing only Representative Sampling data to Plaintiff in the event Plaintiff conducts
4 compliance monitoring under Section 2.1.6 or otherwise moves to enforce this Consent Judgment.

5 **2.1.6 Compliance Monitoring.** At any time following 60 days after the
6 Effective Date, Plaintiff may request that Defendant provide, within thirty-five (35) days of the
7 date of its request, documentation supporting the sale in California of any Product manufactured
8 after the Effective Date and sold without the health hazard warnings specified in this Consent
9 Judgment. For the first two years after the Effective Date, such requests may be made with
10 respect to as many as twenty-five (25) percent, annually, of the number of Products listed on
11 Defendant's then current list of Products subject to this Consent Judgment, up to a maximum of
12 twenty (20) requests in total for the year, concerning up to twenty (20) different Products in that
13 year. After year two after the Effective Date, Plaintiff may request information on no more than
14 ten (10) percent, annually, of the number of Products listed on Defendant's then current list of
15 Products subject to this Consent Judgment, up to a maximum of ten (10) requests in total for the
16 year, concerning up to ten (10) different Products in that year. After year three after the Effective
17 Date, Plaintiff shall not be entitled to request information pursuant to this Section 2.1.6, unless a
18 violation of this Consent Judgment previously was established within the three years preceding
19 the date of the Plaintiff request, in which case Plaintiff shall be entitled to tender up to twelve (12)
20 requests in total for information respecting up to twelve (12) different Products for up to one
21 more year after the date of Plaintiff's request. For any Product for which Plaintiff's request for
22 such documentation is not provided within sixty (60) days of the date of the request, such Product
23 will be deemed sold in violation of this Consent Judgment as to all sales in California of that
24 Product after the date of Plaintiff's request through the date upon which such documentation is
25 received by Plaintiff and therefore will be subject to the provisions of Section 3.1; provided,
26 however, that Defendant's mere contesting of any assertion by Plaintiff concerning inadequacies
27 in the documentation produced to Plaintiff shall not, in and of itself, be deemed a violation of this
28 Section 2.1.6. For Plaintiff to establish a violation of this Section, the documentation provided or

1 other documentation must show that a health hazard warning was required under this Consent
2 Judgment. Violations of this Section 2.1.6 may be enforced as specified hereinbelow and are not
3 exclusive of other remedies, if any, available to Plaintiff.

4 **2.1.7 Limited Exemptions from Testing.** Defendant need not test (or have
5 tested on its behalf) all excipients, fillers, flavors, colors, binders or other ingredients of uniform
6 manufacture or consistently uniform high purity (“Standardized Ingredients”) if it reasonably and
7 in good faith believes, after conducting the research and analysis described below, that it can
8 demonstrate, with admissible evidence, such Standardized Ingredients do not contain lead at
9 levels that might cause or contribute to a violation of this Consent Judgment. Defendant’s good
10 faith belief shall be based on periodic laboratory test data, vendor certifications, or other such
11 reasonable and appropriate information including consideration of the reliability and consistency
12 of the supplier, the nature of the ingredient, the amount used and other relevant scientific factors.
13 Defendant periodically shall monitor and evaluate such Standardized Ingredients for lead levels.
14 In the event that Plaintiff should move to enforce this Consent Judgment, Defendant bears the
15 burden of establishing by a preponderance of the evidence that any failure to test a Standardized
16 Ingredient for lead content was reasonable and in good faith, and must produce all such
17 supporting evidence in the context of the meet and confer process concerning enforcement of this
18 Consent Judgment contemplated under Section 8.1 herein. Defendant’s failure to test a
19 Standardized Ingredient for lead content, in the absence of a reasonable and good faith belief that
20 such ingredient does not contain lead at levels that might cause or contribute to a violation of this
21 Consent Judgment, shall constitute a material breach of this Consent Judgment and be subject to
22 stipulated civil penalties as provided for herein if such failure to test causes or contributes to a
23 failure to provide a warning when required under Section 2.2 or causes or contributes to a
24 violation of Section 2.4 of this Consent Judgment.

25 **2.1.8 Product or Ingredient Specifications.** On or before the date that is sixty
26 (60) days after the Effective Date, for Products manufactured by or for Defendant after the
27 Effective Date, Defendant shall establish, at its option, either: (a) specifications for the lead
28 content of all raw materials used in the Products, or (b) specifications for the lead content in

1 finished Products. Defendant shall not manufacture Products using raw materials which fail to
2 meet the lead specifications Defendant established for raw materials used in the manufacture of
3 Products. Defendant shall not ship for sale or use in California Products which fail to meet
4 Defendant's specifications for lead content in finished Products, unless such Products meet all
5 terms of this Consent Judgment, including the warning obligations in Section 2 and the terms of
6 Section 9. Defendant may from time to time adjust specifications for raw materials or for
7 finished Products.

8 **2.2 Provision of Clear and Reasonable Warnings.**

9 **2.2.1 On-Product Warnings.** On or before the date that is sixty (60) days
10 following the Effective Date, Defendant shall permanently cease and no longer ship for sale or
11 use in California any Products (as defined in Sections 1.3 and 9.1) which require a warning under
12 the terms of this Consent Judgment, unless each individual Product (in the form intended for sale
13 to the end-user) bears one of the warning statements specified below on its individual unit label or
14 unit packaging:

15 (a) (i) Subject to Sections 2.3 and 2.4, if use or consumption of the Product in accordance
16 with Defendant's label directions results in an exposure exceeding 0.50 micrograms/day of lead,
17 then the warning shall state the following:

18 **WARNING: The use of this product will expose you to lead, a substance**
19 **known to the State of California to cause birth defects or other reproductive harm.**

20 (ii) Subject to Sections 2.3 and 2.4, if use or consumption of the Product in accordance
21 with Defendant's label directions results in an exposure exceeding 0.50 micrograms/day of lead,
22 and such use or consumption of the Product also results in exposure to one or more additional
23 reproductive toxicants for which a warning is required to comply with Proposition 65, then the
24 warning shall state the following:

25 **WARNING: The use of this product will expose you to lead, and other**
26 **substances known to the State of California to cause birth defects or other**
27 **reproductive harm.**
28

(iii) Subject to Sections 2.3 and 2.4, if use or consumption of the Product in accordance with Defendant's label directions results in an exposure exceeding 0.50 micrograms/day of lead, and such use or consumption of the Product also results in exposure to one or more carcinogens for which a warning is required to comply with Proposition 65, then the warning shall state the following:

WARNING: The use of this product will expose you to lead, and other substances known to the State of California to cause cancer and birth defects or other reproductive harm.

(b) The warning statement shall be prominent and displayed on the label or packaging of each Product with such conspicuousness, as compared with other words, statements, or designs, so as to render it likely to be read and understood by an ordinary individual prior to purchasing or using the Product. The warning statement shall be printed on the label or packaging in a font size no smaller than any other precautionary statements or warnings printed on the Product's label or packaging.

2.2.2 Additional Warnings Concerning Mail Order & Internet Sales. If a Defendant sells a Product that requires a warning under this Consent Judgment, by mail order or over the Internet to a purchaser in the State of California on or after the date that is sixty (60) days after the Effective Date, the following additional requirements shall apply.

(a) For such mail order sales, the warning language required under this Consent Judgment shall also be included in the mail order catalogue, either on the same page as any order form, or on the same page(s) upon which the Product's price is listed, in the same type size as the surrounding, non-heading text (this requirement shall be applicable only to all catalogues featuring Products printed after the Effective Date). If Defendant determines, after a mail order catalogue is printed, that a Product featured therein requires a warning under this Consent Judgment, Defendant may provide a warning in compliance with Section 2.2.1 until the next printing of a mail order catalogue featuring that Product.

(b) For such Internet sales, the warning language required under this Consent Judgment shall be displayed in the same type size as the surrounding, non-heading text, either: (a) on the

1 same page upon which the Product is displayed or referenced; (b) on the same page as the order
2 form for the Product; (c) on the same page as the price for the Product is displayed; or (d) in a
3 dialogue box (which cannot be suppressed by “pop up” box blocking software) which appears
4 when a California address for delivery is provided by the consumer, so long as the dialogue box
5 appears prior to the completion of the internet sale and requires the consumer to affirmatively
6 accept receipt of the warning set forth in the dialogue box (which shall be displayed in the same
7 type size as the surrounding, non-heading text on the screen at the time of the appearance of the
8 dialogue box), as a condition precedent to completing the sale.

9 **2.3 Exceptions To Warning Requirements.** No Product that meets each of the
10 following criteria shall require a warning pursuant to this Consent Judgment:

11 **2.3.1 For Lead Warnings, Exposure Below “No Observable Effect Level.”**
12 Use or consumption of a Product causes total daily exposure¹ to lead of less than 0.5 micrograms
13 when consumed or used in accordance with the Defendant’s label directions, excluding any
14 naturally occurring lead, as defined for purposes of this Consent Judgment in Section 2.3.2
15 (“Naturally Occurring Lead”), in such Product. Prior to shipment for sale to California
16 consumers, Defendant shall provide consumer use instructions on the label or packaging of each
17 individual Product unit (in the form intended for sale to the end-user). If the consumer use
18 instructions include a range of consumption levels (e.g., “take 2 to 4 tablets daily”), then for
19 purposes of determining compliance with Sections 2.2, 2.4, 9 and otherwise under this Consent
20 Judgment, the highest dose instructed shall be the dose.

21 **2.3.2 “Naturally Occurring” Allowance For Lead for Products Shipped for**
22 **Sale After Sixty Days Following The Effective Date.**

23 (a) Initial Naturally Occurring Lead Level. Unless a Product contains a warning in
24 compliance with this Consent Judgment, the initial Naturally Occurring Lead level in any Product
25 subject to this Consent Judgment Defendant ships for sale or use in California after the date that is
26 sixty (60) days following the Effective Date, shall not exceed a concentration that will result in

27 _____
28 ¹ For purposes of this Consent Judgment only, the term “exposure” is deemed to mean
“ingestion”, consistent with Title 22, Cal. Code Regs., section 12102(i) (which defines the term
“expose” as “to cause to ingest....”).

2.25 micrograms lead ingested/day, assuming the Product is used or consumed in accordance with the Defendant's consumer use instructions. Products where the concentration results in lead levels that exceed: (i) this initial 2.25 micrograms ingested level or (ii) Products which exceed any future Naturally Occurring Lead level subsequently established pursuant to this Consent Judgment (plus, in either the case of (i) or (ii) an additional 0.5 micrograms lead as allowed by regulation and under Section 2.3.1), shall be subject to the warning requirements set forth in Sections 2.2.1, 2.2.2, and 9 herein, unless Defendant can show by a preponderance of the evidence that all lead in such Products (except 0.5 micrograms ingested in a daily dose) is naturally occurring per 22 Cal. Code Reg. § 12501. If Defendant in the future elects to make this showing that more than 2.25 micrograms of lead is naturally occurring, Defendant agrees to provide all information on which it relies to support such a showing to Plaintiff in the context of the meet and confer process concerning enforcement of this Consent Judgment contemplated under Section 8.1 herein. Defendant's failure to produce complete information during the meet and confer process, or Defendant's failure to establish to the Court, based on such information, by a preponderance of the evidence, that lead in excess of 0.5 micrograms in a daily dose, plus Naturally Occurring Lead, is naturally occurring under the criteria in 22 Cal. Code Reg. § 12501 shall constitute a material breach of this Consent Judgment and be subject to stipulated civil penalties as provided for herein if a Product which requires a health hazard warning under this Consent Judgment was sold in California without such warning. Nothing in this Section 2.3.2 constitutes a waiver of Defendant's right to establish, in accordance with the procedures set forth in Sections 2.3.2 and 8.1, that levels of metals other than lead are naturally occurring under the criteria of 22 Cal. Code Reg. § 12501. The Parties agree that the initial 2.25 micrograms Naturally Occurring Lead level is the result of negotiations and a review of the available information and shall be applicable to the Products subject to this Consent Judgment and shall have no application to other products.

(b) Evaluation of Future Naturally Occurring Lead Levels. In recognition of the possibility that the "lowest level feasible" of lead may change over time, the Parties agree that for at least three (3) years after the Effective Date, Defendant shall have the right to tender a

1 statement of determination to AYS as to whether an adjustment to the Naturally Occurring Lead
2 level can be supported by a preponderance of the evidence. If tendered, such statement of
3 determination shall be tendered to AYS on or before April 15th for the years 2009, 2010 and
4 2011. Such a determination respecting the Naturally Occurring Lead level shall be made in good
5 faith and be based on Representative Sampling and "Feasibility." "Feasibility" for purposes of
6 this Consent Judgment shall mean consideration of the following: (1) the availability and
7 reliability of a supply to Defendant of raw materials in question; (2) the reasonable cost to
8 Defendant of Products or raw materials therein; (3) any resulting unreasonable increase in cost to
9 a Defendant to procure a Product or raw materials with lower levels of lead; (4) performance
10 characteristics, including formulation, performance, safety, taste, efficacy and stability, of any
11 raw materials or finished Product; (5) the lawfulness of alternatives (no alternative shall result in
12 a violation of law, or a breach of a standard of identity); and (6) other relevant and reasonable
13 considerations. If upon determination of Defendant a change in the Naturally Occurring Lead
14 level is warranted under the criteria above, then Defendant within sixty (60) days of the statement
15 date may proceed to modify this Consent Judgment in accordance with Section 8 herein.
16 Defendant's obligations under this Section 2.3.2(b) are without prejudice to any rights of Plaintiff
17 under Section 8 or otherwise herein. If either Party seeks to modify the initial or any
18 subsequently established Naturally Occurring Lead level as defined herein, such modification
19 shall only be effective upon an order by the Court, after a noticed motion, notice of which motion
20 shall be served on the Office of the Attorney General at least forty-five (45) days prior to the
21 hearing date, and which motion shall include the information supporting the request for
22 modification.

23 (c) Defendant also shall be entitled to exclude from the calculation of the daily lead
24 exposure the amount of naturally occurring lead in the following non-herbal ingredients only if
25 used in a Product: calcium, ferrous fumarate, zinc oxide, magnesium oxide, magnesium chloride,
26 magnesium hydroxide, zinc gluconate and potassium chloride. The amount of lead in each of
27 these ingredients deemed naturally occurring shall be conclusively and irrefutably presumed to be
28 the amount of lead that would be deemed naturally occurring under the consent judgment entered

on November 11, 1998 in *People v. Warner Lambert*, San Francisco Superior Court Case No. 984403.

2.3.3 Conditions Under Which “Naturally Occurring” Allowance For Lead Applies. For purposes of compliance with this Agreement, Defendant shall be required to adhere to 22 Cal. Code Reg. § 12501 and Defendant shall be entitled to exclude the amount of lead specified in Section 2.3.2 pursuant to the provisions of this Agreement. Defendant shall bear the burden of proof in establishing, by a preponderance of the evidence that, with respect to each Product unit subject to an enforcement proceeding, the conditions specified in this Section 2.3.3 have been satisfied.

2.4 Ban on Sales of Products Causing Exposures to Lead in Excess of 10 Micrograms Per Day. No Product subject to this Consent Judgment may be shipped by Defendant for sale in the State of California after sixty (60) days following the Effective Date if, when used or consumed in accordance with the Defendant’s label directions, it causes an exposure to lead in excess of ten (10.0) micrograms/day.

3. CIVIL PENALTIES

3.1 Stipulated Civil Penalties For Future Violations of This Agreement. Proposition 65 provides for civil penalties of up to \$2500 per violation per day, pursuant to California Health & Safety Code § 25249.7. In the event that after sixty (60) days following the Effective Date, Defendant violates Sections 2 or 9 herein, the Parties stipulate that Defendant shall be liable for a stipulated civil penalty in the amount of \$10.00 per unit item sold in violation of this Consent Judgment, unless the Defendant’s actual per unit sale price to the buyer was less than \$10.00, in which case the stipulated penalty shall be fifty percent (50%) of the sale price Defendant received from the relevant buyer for the Products at issue. Total civil penalties concerning all Products sold in violation of this Consent Judgment shall not exceed \$75,000 for such violations in any calendar year. Plaintiff may establish such violation(s) hereunder by a preponderance of the evidence upon a duly noticed motion in the San Francisco Superior Court and subject to the provisions of Section 8 herein. Plaintiff shall remit 75% of this amount to the State of California pursuant to Health & Safety Code § 25249.12(b).

1 **3.2 Civil Penalty Assessment.** Defendant shall pay a civil penalty in the amount of
2 \$10,000 to Plaintiff, pursuant to Health & Safety Code § 25249.7(b). Plaintiff shall remit 75% of
3 this amount to the State of California pursuant to Health & Safety Code § 25249.12(b).

4 **3.3 Payment in Lieu of Additional Civil Penalties.** Defendant has provided
5 information to Plaintiff documenting an inability to pay certain sums in settlement of this matter.
6 In lieu of an additional payment beyond the sum set forth in this Section 3.3, Defendant agrees to
7 prepare and submit to Plaintiff two confidential reports, the first being due April 15, 2009 and the
8 second due April 15, 2010. In each confidential report Defendant agrees to document a minimum
9 of the following: (a) Defendant's efforts to reduce lead levels in the Products during the year
10 covered by each report; (b) a listing of raw material suppliers used in the year covered by each
11 report; and (c) an assessment of the efficacy of one or more lead reduction initiatives. Plaintiff
12 agrees to retain the confidentiality of such reports and review them internally only on a "need to
13 know" basis. In addition to the reports, Defendant shall make a payment in lieu of additional
14 penalties in the amount of \$105,000 to Plaintiff. Plaintiff shall forward at least one-half of these
15 funds to California non-profit groups to reduce exposures to toxic chemicals, and to increase
16 consumer, worker and community awareness of the health hazards posed by toxic chemicals.
17 Any remaining funds shall be deposited in the As You Sow Foundation Environmental
18 Enforcement Fund and shall be used to reduce exposures to toxic chemicals, and to increase
19 consumer, worker and community awareness of the health hazards posed by toxic chemicals. In
20 deciding among the grantee proposals, the As You Sow Board of Directors ("Board") takes into
21 consideration a number of factors, including: (1) the nexus between the alleged harm in the
22 underlying case(s), and the grant program work; (2) the potential for toxics reduction, prevention,
23 remediation or education benefits to California residents from the proposal; (3) the budget
24 requirements of the proposed grantee and the alternate funding sources available to it for its
25 project; and (4) the Board's assessment of the grantee's chances for success in its program work.
26 Plaintiff shall ensure that all funds will be disbursed and used in accordance with Plaintiff's
27 mission statement, articles of incorporation, and bylaws and applicable state and federal laws and
28 regulations within one year of receipt.

1 **3.4 Penalties are not a credit.** No penalties paid herein shall be construed as a
2 credit against future new claims against Defendant.

3 **4. REIMBURSEMENT OF FEES AND COSTS**

4 **4.1 Reimbursement of Plaintiff's Investigative, Expert and Legal Fees and Costs.**
5 Defendant shall reimburse Plaintiff in the amount of \$35,000 for Plaintiff's reasonable
6 investigative, expert, and legal fees and costs incurred as a result of investigating and negotiating
7 a settlement in the public interest.

8 **5. PAYMENT OBLIGATIONS**

9 **5.1** Pursuant to Sections 3.2, 3.3 and 4.1 herein, Defendant agrees to remit the total
10 amount of \$150,000 to Plaintiff, payable to "As You Sow" as follows: an initial payment of
11 \$45,000 within forty (40) days of the Effective Date of this Consent Judgment; the balance of the
12 sum due payable in seven (7) equal installments of \$15,000, with such payments being due on
13 February 1, 2009, May 1, 2009, August 1, 2009, November 1, 2009 and February 1, 2010, May 1,
14 2010 and August 1, 2010. In the event that any payment owed by Defendant under this Consent
15 Judgment is not remitted or post-marked on or before its due date, Defendant shall be deemed to
16 be in default of its obligations under this Section. Plaintiff shall provide written notice to
17 Defendant of any default; if Defendant fails to remedy the default within five (5) business days of
18 such notice, then all future payments due hereunder shall become immediately due and payable,
19 with the prevailing federal funds rate applying to all interest accruing on unpaid balances due
20 hereunder, beginning on the due date of the specific payment or payments in default.

21 **6. RELEASE OF LIABILITY**

22 **6.1 Release of Liability.** Plaintiff, on its own behalf, and on behalf of the general
23 public, waives all rights to institute or participate in, directly or indirectly, any claim or form of
24 legal action against Defendant, its officers, directors, employees, agents, attorneys,
25 representatives, shareholders, parents, subsidiaries, affiliates, divisions, predecessors, successors,
26 subdivisions, downstream distributors, downstream retailers, downstream customers, and
27 upstream suppliers (including manufacturers of the Products and manufacturers of the raw
28 materials of the Products) under Proposition 65 based upon Defendant's alleged failure to warn,

1 within the meaning of Proposition 65, about exposure to lead in any of the Products sold in
2 California or to California consumers on or before sixty (60) days after the Effective Date or
3 based on any other legal claim or theory that was or could have been alleged in the Action based
4 on the facts alleged in the Action.

5 **6.2 Release of Liability of Plaintiff.** Defendant waives all of its rights to institute any
6 claim, or form of legal action against Plaintiff, its officers, directors, employees, agents, attorneys
7 and representatives (the "Plaintiff Releasees") for all actions or statements made or undertaken by
8 the Plaintiff Releasees in the course of seeking enforcement of Proposition 65 through the Action.

9 **7. CONSENT JUDGMENT**

10 **7.1 Consent Judgment.** Upon execution of this Consent Judgment by all Parties,
11 Plaintiff shall promptly notice a Motion for Approval & Entry of Consent Judgment in the San
12 Francisco Superior Court pursuant to Title 11, Cal. Code of Regs. §3000, *et seq.* This Motion
13 shall be served upon all of the Parties to the Action and upon the California Attorney General's
14 Office. In the event that the Court fails to approve and order entry of the judgment, this Consent
15 Judgment shall become null and void upon the election of any Party as to them and upon written
16 notice to all of the Parties to the Action pursuant to the notice provisions herein. If this Consent
17 Judgment becomes null and void, or is not approved by the Court within one hundred and eighty
18 (180) days of its execution by all Parties, Plaintiff shall refund all sums paid by Defendant
19 pursuant to Sections 3.2, 3.3 and 4.1 within fifteen (15) days of written notice to Plaintiff by
20 Defendant that a refund is due. Defendant and Plaintiff shall use best efforts to support entry of
21 this Consent Judgment in the form submitted to the Office of the Attorney General. If the
22 Attorney General objects in writing to any term in this Consent Judgment, the Parties shall use
23 best efforts to resolve the concern in a timely manner and prior to the hearing on the motion to
24 approve this Consent Judgment. If the Parties cannot resolve an objection of the Attorney
25 General, then AYS and Defendant shall proceed with seeking entry of an order by the court
26 approving this Consent Judgment in the form originally submitted to the Office of the Attorney
27 General, or in such other form as the Parties shall mutually agree upon after consideration of any
28 comments of the Attorney General. If the Attorney General elects to file a notice or motion with

the Court stating that the People shall appear at the hearing for entry of this Consent Judgment so as to oppose entry of the Consent Judgment, then a party may withdraw from this Consent Judgment prior to the date of the hearing, with notice to all parties and the Attorney General, and upon such notice this Consent Judgment shall be null and void and any sums paid hereunder shall be returned to Defendant within fifteen (15) days of the date of the notice. If the Attorney General files a notice of appeal of this Consent Judgment, then a party may withdraw from this Consent Judgment within forty-five (45) days of the Peoples' notice of appeal and this Consent Judgment shall be null and void ab initio five (5) days after notice of the withdrawal and any sums paid hereunder shall be returned to Defendant within fifteen (15) days of the date of voiding.

7.2 Amendment To Complaint. Upon the expiration of the 60-Day Notice issued on or about June 24, 2008, and in the event that no public prosecutors have commenced diligent prosecution against Defendants for such violations, the Complaint herein shall be deemed amended to include all violations described in that 60-Day Notice.

8. ENFORCEMENT AND MODIFICATION

8.1 Enforcement and Stipulated Civil Penalties. In the event that a dispute arises with respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer within twenty (20) days after any Party receives written notice of an alleged violation of this Consent Judgment from another Party. In the event the affected Parties cannot resolve the dispute, this Consent Judgment may be enforced pursuant to Code of Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any dispute regarding compliance with the terms of this Consent Judgment shall be awarded its reasonable fees and costs incurred, in addition to any other relief otherwise ordered by the Court, including but not limited to civil penalties assessed pursuant to Section 3 herein.

8.2 Modification of Judgment - Grounds. This Consent Judgment shall not obligate Defendant to provide a health hazard warning (as described in Section 2 herein) for a Product if that Product causes an exposure below the "No Significant Risk Level" or "Maximum Allowable Daily Level," as those terms are defined in Proposition 65 and its implementing

1 regulations. Any such levels adopted in a final regulation or law pursuant to Proposition 65 after
2 the Effective Date shall become the standard under this Consent Judgment on the date of adoption
3 without need for formal modification of this Consent Judgment, but Defendant retains its rights
4 and obligations under Section 2.3.2. to establish naturally occurring levels of lead. The Parties
5 acknowledge that new toxicological information or exposure assessments concerning hazardous
6 substances and testing methodologies are continuously becoming available, and that statutory and
7 regulatory standards applicable to the Products may evolve in the future. Accordingly, the Parties
8 agree that any Party may file a motion pursuant to § 664.6 of the California Code of Civil
9 Procedure, and under the conditions set forth below, move the Court for modification of the
10 warning requirement or any other term set forth in Section 2 herein on the grounds that (a) they
11 conflict with the applicable legal standards concerning the Products or any ingredient therein, or
12 (b) the warning requirement or any other term set forth in Section 2 herein are more stringent than
13 the warning requirements AYS agrees to after the Effective Date in an order, judgment or
14 settlement under Proposition 65 with respect to any dietary supplements that are substantially
15 similar to the Products herein. Absent good cause shown by Plaintiff, Plaintiff shall allow
16 modification of this Consent Judgment to permit Defendant to adhere to such less stringent
17 warning requirements. Any disputes regarding the issues set forth in this subsection shall be
18 resolved in accordance with the procedures set forth in Section 8.3 below.

19 **8.3 Modification of Judgment – Procedure.** In the spirit of cooperation and in the
20 interests of minimizing the investigative, expert and attorneys’ fees and costs associated with
21 such a motion, the Parties agree to meet and confer in good faith as follows. Prior to filing a
22 motion pursuant to Section 8.2 herein, the Party seeking to modify the judgment shall first
23 provide the non-moving Party and the California Attorney General’s Office with any legal or
24 scientific information upon which the motion would rely. The non-moving Party and the
25 California Attorney General’s Office shall be allowed a period of forty-five (45) days to review
26 that information and to provide the moving Party with its formal written response (the Attorney
27 General’s Office’s failure to respond to this submission shall not be construed in any manner to
28 reflect any particular view, on the part of the Attorney General’s Office, of this Consent Judgment

1 or of the applicable law or science). The Parties shall then meet and confer within twenty (20)
2 days of the non-moving Party's written response. If, after meeting and conferring, the moving
3 Party elects to proceed with a motion to amend this Consent Judgment, it may do so with proper
4 notice to the other Party and the Attorney General's Office as required under the California Code
5 of Civil Procedure. Such a motion may be accompanied by scientific data, studies, written
6 declarations, and live testimony or discovery responses. In the event that the Court determines
7 that a Party seeking or opposing a motion to modify this Consent Judgment did so without
8 justification or failed to meet and confer in good faith prior to moving for such modification, the
9 other Party shall be awarded reasonable fees and costs incurred.

10 **9. NEW PRODUCTS.**

11 **9.1 New Product Testing Prior to Sale in California.** If, after the date that is sixty
12 (60) days after the Effective Date, Defendant elects to ship for sale in California any new
13 ingestible herbal product(s) of the type set forth in Section 1.2 but not identified on Exhibit A
14 hereto, Defendant shall, before shipping the new product(s) for sale in California, conduct the
15 testing set forth in Section 2.1 and adhere to the requirements of this Consent Judgment with
16 respect to such new product(s). Failure to provide the warning if required under Section 2.2 shall
17 be a violation of this Consent Judgment subject to stipulated penalties in accordance with Section
18 3.1. Such new product(s) shall then be deemed Product(s) subject to all of the terms of this
19 Consent Judgment. Before the date that is sixty (60) days after the Effective Date, Defendant
20 may ship for sale to California customers new or reformulated products of the type set forth in
21 Section 1.2 that are not listed on Exhibit A, and the sales of such products shall not be deemed in
22 violation of any term of this Consent Judgment. Notwithstanding any other term of this Consent
23 Judgment, Defendant also may ship for sale to California customers any finished Product units
24 which are packaged into final form for sale to consumers and which are stock on hand on the
25 Effective Date. The sales of such product units in such existing packaging are covered by Section
26 6.1 and shall not be deemed a violation of any term of this Consent Judgment, nor be subject to
27 the terms, obligations or limits of Section 2.
28

9.2 Annual New Product Update List. Commencing on April 15, 2009 and annually on that date through and including April 15, 2011, Defendant shall provide Plaintiff with an annual updated list of new Products Defendant shipped for sale or use in California in the preceding calendar year for which Defendant has ascertained that warnings are not required under this Consent Judgment. Defendant shall include, for each new Product identified on the annual updated list, either: (a) at least one finished product test result documenting the lead level in each new Product or (b) a calculation of the total lead level in the Product, expressed in micrograms/day, based on Defendant's Representative Sampling data. If Plaintiff cannot ascertain and in good faith inquires in writing as to whether a specific Product is a new Product in a given year, Defendant shall promptly (and in any event within thirty-five (35) days the date of AYS' request) reply to advise whether the Product is a new Product for that year or is an existing Product.

10. GOVERNING LAW

10.1 Governing Law. The terms of this Consent Judgment shall be governed by the laws of the State of California. This Consent Judgment shall not govern Products or products sold to consumers or other persons outside the State of California.

11. NOTICES

11.1 Notices. All correspondence and notices required to be provided under this Agreement shall be in writing and shall be sent by first class registered or certified mail, or via a reputable overnight delivery service with a tracking mechanism, addressed as follows:

<u>All correspondence to Plaintiff shall be mailed to:</u>	<u>With a copy to:</u>
Attn: Lawrence E. Fahn, Executive Director	Andrew L. Packard, Esq.
As You Sow	Law Offices of Andrew L. Packard
311 California Street, Suite 510	319 Pleasant Street
San Francisco, CA 94104	Petaluma, CA 94952

<u>All correspondence to Defendants shall be mailed to:</u>	<u>With a copy in each case to:</u>
Amanda Goodsell, Director of Operations	Judith M. Praitis, Esq.
Wholistic Botanicals LLC	Sidley Austin LLP
155 West 2050 N.	555 West 5 th Street, 40 th Floor
Spanish Fork, UT 84660	Los Angeles, CA 90013.

12. **INTEGRATION AND MODIFICATION**

12.1 **Integration & Modification.** This Consent Judgment, together with the Exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the Parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the Parties. Except as set forth in Section 8, this Consent Judgment may be modified only upon the written agreement of the Parties to be bound. If any term of this Consent Judgment is found by the court to be invalid, then such term shall be stricken and the remaining terms shall not be affected thereby. In the interpretation hereof, references to general "Sections" (e.g., "Section 8") shall include all subsections within said section (e.g., Sections 8.1, 8.2 and 8.3), but references to specific subsections (e.g., "Section 2.2.1") shall refer only to that specific subsection.

13. **COUNTERPARTS**

13.1 **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.

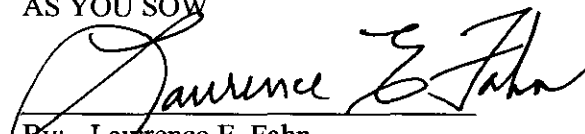
14. **AUTHORIZATION**

14.1 **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO STIPULATED:

DATED: 6-23-08

AS YOU SOW



By: Lawrence E. Fahn
Executive Director

LAW OFFICES
ANDREW L. PACKARD
319 PLEASANT STREET PETALUMA CALIFORNIA 94952
TEL 707-763-7227 FAX 707-763-9227

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DATED: 6-20-08

WHOLISTIC BOTANICALS LLC


By: Robert C. Scott
Owner

IT IS SO ORDERED:

DATED: _____

Judge of the Superior Court

INDEX OF ATTACHED EXHIBITS

EXHIBIT A - Product List

EXHIBIT B - Notices of Proposition 65 Violations

EXHIBIT A

1		
2	Finished Goods:89147	Adrenal Formula Capsule 100 ct.
3	Finished Goods:86700	Alfalfa Leaf Capsule 100 ct.
4	Finished Goods:89111	Appetite Formula Capsule 100 Ct.
5	Finished Goods:86704	Astragalus Root Capsule 100 ct.
6	Finished Goods:86708	Bee Pollen Capsule 100 ct.
7	Finished Goods:89170	Bee Power Energy Capsule 100 Ct.
8	Finished Goods:89106	Bilberry Eye Capsule 100 Ct.
9	Finished Goods:86710	Black Cohosh Root Capsule 100 ct.
10	Finished Goods:89105	Bladder Formula Capsule 100 Ct.
11	Finished Goods:89110	Blood Circulation Capsule 100 Ct.
12	Finished Goods:89102	Blood Stream Capsule 100 Ct.
13	Finished Goods:86728	Blowout – Dong Quai Capsule 100 ct.
14	Finished Goods:86712	Burdock Root Capsule 100 ct.
15	Finished Goods:86713	Butcher's Broom Root Capsule 100 ct.
16	Finished Goods:86714	Cascara Sagrada Bark Capsule 100 ct.
17	Finished Goods:86716	Cat's Claw Bark Capsule 100 ct.
18	Finished Goods:86720	Cayenne Pepper Capsule 100 ct.
19	Finished Goods:86723	Chaste Tree Berry Capsule 100 ct.
20	Finished Goods:89119	Chest Formula Capsule 100 Ct.
21	Finished Goods:86717	Cinnamon Bark Capsule 100 ct.
22	Finished Goods:89116	Cold Season Capsule 100 Ct.
23	Finished Goods:89128	Complete Tissue & Bone Capsule 100 Ct.
24	Finished Goods:86726	Dandelion Root Capsule 100 ct.
25	Finished Goods:89140	Echinacea & Goldenseal Capsule 100 ct.
26	Finished Goods:86729	Echinacea Angustifolia Root Capsule 100 ct.
27	Finished Goods:86743	Eleuthero Root Capsule 100 ct.
28	Finished Goods:86733	Eyebright Herb Capsule 100 ct.
	Finished Goods:89126	False Unicorn & Lobelia Capsule 100 Ct.
	Finished Goods:89121	Female Reproductive Capsule 100 Ct.
	Finished Goods:89114	Female Tonic Capsule 100 Ct.
	Finished Goods:86735	Fenugreek Seed Capsule 100 ct.
	Finished Goods:86738	Garlic Bulb Capsule 100 ct.
	Finished Goods:81040	Gas-Eze Capsule 100 Ct.
	Finished Goods:86741	Ginger Root Capsule 100 ct.
	Finished Goods:89112	Glandular System Capsule 100 Ct.
	Finished Goods:86746	Goldenseal Root Capsule 100 ct.
	Finished Goods:86744	Hawthorn Berry Capsule 100 ct.
	Finished Goods:89146	Heavy Mineral Bugleweed Capsule 100 ct.
	Finished Goods:89108	Herbal Calcium Capsule 100 Ct.
	Finished Goods:89160	Herbal Cleansing Kit - Capsule
	Finished Goods:89120	Herbal Eyebright Capsule 100 Ct.
	Finished Goods:89125	Herbal Iron Capsule 100 Ct.
	Finished Goods:89129	Herbal Libido Capsule 100 Ct.
	Finished Goods:89139	Herbal Thyroid Capsule 100 Ct.
	Finished Goods:89123	Hormonal Changease Capsule 100 Ct.
	Finished Goods:86748	Horsetail Herb Capsule 100 ct.
	Finished Goods:89117	Immucalm Capsule 100 Ct.
	Finished Goods:89118	Immune System Capsule 100 Ct.
	Finished Goods:89131	Infection Formula Capsule 100 Ct.

1	Finished Goods:89130	Joint Formula Capsule 100 Ct.
	Finished Goods:89171	Jurassic Green Capsule 100 ct.
2	Finished Goods:86756	Kelp Plant Capsule 100 ct.
3	Finished Goods:89104	Kidney Formula Capsule 100 Ct.
	Finished Goods:89103	Liver & Gall Bladder Capsule 100 Ct.
4	Finished Goods:89124	Liver Transition Capsule 100 Ct.
	Finished Goods:89101	Lower Bowel Capsule 100 Ct.
5	Finished Goods:89101s	Lower Bowel Sample
	Finished Goods:89115	Lung & Bronchial Capsule 100 ct.
6	Finished Goods:89141	Male Tonic Capsule 100 Ct.
	Finished Goods:89122	Male Urinary Tract Capsule 100 Ct.
7	Finished Goods:89133	Master Gland Capsule 100 Ct.
	Finished Goods:89156	Memory Plus Capsule 100 ct.
8	Finished Goods:89173	Metaburn Herbal Weight Capsule 100 ct.
	Finished Goods:89134	MindTrac Capsule 100 Ct.
9	Finished Goods:89134s	MindTrac Sample
10	Finished Goods:86760	Mullein Leaf Capsule 100 ct.
	Finished Goods:86762	Nettle Leaf Capsule 100 ct.
11	Finished Goods:89107	Pancreas Formula Capsule 100 Ct.
	Finished Goods:86764	Pau D' Arco Bark Capsule 100 ct.
12	Finished Goods:89127	Pre-Natal Capsule 100 Ct.
	Finished Goods:89135	Prostate Plus Capsule 100 Ct.
13	Finished Goods:89136	Quick Colon #1 Capsule 100 ct.
	Finished Goods:89137	Quick Colon #2 Powder 8 oz.
14	Finished Goods:86766	Red Clover Blossom Capsule 100 ct.
	Finished Goods:86768	Red Raspberry Leaf Capsule 100 ct.
15	Finished Goods:89113	Relax-Eze Capsule 100 ct.
	Finished Goods:86770	Saw Palmetto Berry Capsule 100 ct.
16	Finished Goods:89109	Sinus Plus Capsule 100 Ct.
	Finished Goods:86776	Slippery Elm Bark Capsule 100 ct.
17	Finished Goods:81050	Slumber Capsules 100 Ct.
	Finished Goods:89142	Soothing Digestion Capsule 100 ct.
18	Finished Goods:86780	Spirulina Capsule 100 ct.
	Finished Goods:86782	St. John's Wort Herb Capsule 100 ct.
19	Finished Goods:81060	Stop-Ache Capsule 100 Ct.
	Finished Goods:89132	Thyroid Maintenance Capsule 100 Ct.
20	Finished Goods:89161	Top 30 Best Sellers Display
	Finished Goods:86783	Valerian Root Capsule 100 ct.
21	Finished Goods:89138	Vitalerbs Capsule 180 Ct.
22	Finished Goods:89138s	Vitalerbs Sample
		Dong Quai
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LAW OFFICES
ANDREW L. PACKARD
319 PLEASANT STREET PETALUMA CALIFORNIA 94952
TEL 707-763-7227 FAX 707-763-9227

EXHIBIT B

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August 20, 2007

311 California Street, Suite 510
San Francisco, CA 94104
T 415.391.3212
F 415.391.3245
www.asyousow.org

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (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.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **WHOLISTIC BOTANICALS, L.L.C.** doing business as **CHRISTOPHER'S ORIGINAL FORMULAS** ("WB").

Chemicals. These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by WB. The phrase "traditional patent medicines" above is used herein as defined by the California Department of Health Services: "herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and



liquids.” The products that are the subject of this notice include but are not limited to the following:

<u>Product</u>	<u>Chemical</u>
SINUS PLUS FORMULA	lead and lead compounds
DONG QUAI	lead and lead compounds
HERBAL THYROID	lead and lead compounds
IMMUNE SYSTEM	lead and lead compounds
SLUMBER	lead and lead compounds
FEMALE REPRODUCTIVE FORMULA	lead and lead compounds
RELAX-EZE	lead and lead compounds
HORMONAL CHANGEASE	lead and lead compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

Duration of violations. Each of these ongoing violations has occurred on every day for at least August 20, 2006, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227 Fax: 707-763-9227

Very truly yours,


Larry Fahn
Executive Director

Enclosure


CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Wholistic Botanicals L.L.C. doing
business as Christopher's Original Formulas)

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §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 has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 plaintiffs' 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 §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: August 17, 2007



Andrew L. Packard

Attachments (for Attorney General copy only)

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

HISTORY

1. New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

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, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On August 20, 2007, I served the following documents:

- Notice of Violation 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 parties listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Robert Scott, President
Wholistic Botanicals, L.L.C.
dba Christopher's Original Formulas
155 W. 2050 N
Spanish Fork, UT 84660

On August 20, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:


Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On August 20, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- 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 United States Postal Service mail box for delivery by First Class Mail.

Executed on August 20, 2007, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE WILLIAM RICHMOND
ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE TODD D RIEBE
AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

THE HONORABLE JEFFREY TUTTLE
CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

THE HONORABLE JOHN POYNER
COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST
COLUSA CA 95932

THE HONORABLE ROBERT KOCHLY
CONTRA COSTA COUNTY DISTRICT
ATTORNEY
PO BOX 670
MARTINEZ CA 94553

THE HONORABLE MICHAEL RIESE
DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST STE 171
CRESCENT CITY CA 95531

THE HONORABLE VERNON PIERSON
EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN ST
PLACERVILLE CA 95667

THE HONORABLE ELIZABETH EGAN
FRESNO COUNTY DISTRICT ATTORNEY
2220 TULARE ST STE 1000
FRESNO CA 93721

THE HONORABLE ROBERT HOLZAPFEL
GLENN COUNTY DISTRICT ATTORNEY
PO BOX 430
WILLOWS CA 95988

THE HONORABLE PAUL GALLEGOS
HUMBOLDT COUNTY DISTRICT ATTORNEY
825 FIFTH ST
EUREKA CA 95501

THE HONORABLE GILBERT OTERO
IMPERIAL COUNTY DISTRICT ATTORNEY
939 W MAIN ST
EL CENTRO CA 92243

THE HONORABLE ARTHUR MAILLET
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE EDWARD R JAGELS
KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE
BAKERSFIELD CA 93301

THE HONORABLE RON CALHOUN
KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

THE HONORABLE JON HOPKINS
LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

THE HONORABLE ROBERT BURNS
LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

THE HONORABLE STEVE COOLEY
LA COUNTY DISTRICT ATTORNEY
210 W TEMPLE ST STE 18000
LOS ANGELES CA 90012-3210

THE HONORABLE ERNEST LICALSI
MADERA COUNTY DISTRICT ATTORNEY
209 W YOSEMITE AVE
MADERA CA 93637

THE HONORABLE EDWARD BERBERIAN
MARIN COUNTY DISTRICT ATTORNEY
3501 CIVIC CTR DR RM 130
SAN RAFAEL CA 94903

THE HONORABLE ROBERT BROWN
MARIPOSA COUNTY DISTRICT ATTORNEY
PO BOX 730
MARIPOSA CA 95338

THE HONORABLE KEITH FAULDER
MENDOCINO COUNTY DISTRICT ATTORNEY
PO BOX 1000
UKIAH CA 95482

THE HONORABLE LARRY MORSE II
MERCED COUNTY DISTRICT ATTORNEY
2222 M ST
MERCED CA 95340

THE HONORABLE GARY WOOLVERTON
MODOC COUNTY DISTRICT ATTORNEY
204 S COURT ST RM 202
ALTURAS CA 96101-4020

THE HONORABLE GEORGE BOOTH
MONO COUNTY DISTRICT ATTORNEY
PO BOX 617
BRIDGEPORT CA 93517

THE HONORABLE DEAN FLIPPO
MONTEREY COUNTY DISTRICT ATTORNEY
PO BOX 1131
SALINAS CA 93902

THE HONORABLE GARY LIEBERSTEIN
NAPA COUNTY DISTRICT ATTORNEY
931 PARKWAY MALL
NAPA CA 94559

THE HONORABLE CLIFFORD NEWELL
NEVADA COUNTY DISTRICT ATTORNEY
201 CHURCH ST STE 8
NEVADA CITY CA 95959

THE HONORABLE TONY RACKAUCKAS
ORANGE COUNTY DISTRICT ATTORNEY
401 CIVIC CTR DR WEST
SANTA ANA CA 92701

THE HONORABLE BRAD FENOCCHIO
PLACER COUNTY DISTRICT ATTORNEY
11562 B AVE
AUBURN CA 95603

THE HONORABLE JEFF CUNAN
PLUMAS COUNTY DISTRICT ATTORNEY
520 MAIN ST RM 404
QUINCY CA 95971

THE HONORABLE RODRIC PACHECO
RIVERSIDE COUNTY DISTRICT ATTORNEY
4075 MAIN ST
RIVERSIDE CA 92501

THE HONORABLE JAN SCULLY
SACRAMENTO COUNTY DISTRICT ATTORNEY
901 G ST
SACRAMENTO CA 95814

THE HONORABLE CANDICE HOOPER
SAN BENITO COUNTY DISTRICT ATTORNEY
419 FOURTH ST, FL 2
HOLLISTER CA 95023

THE HONORABLE MICHAEL RAMOS
SAN BERNARDINO COUNTY DISTRICT
ATTORNEY
316 N MTN VIEW AVE
SAN BERNARDINO CA 92415-0004

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

THE HONORABLE BONNIE DUMANIS
SAN DIEGO COUNTY DISTRICT ATTORNEY
330 W BROADWAY STE 1320
SAN DIEGO CA 92101

THE HONORABLE KAMALA HARRIS
SAN FRANCISCO COUNTY DISTRICT
ATTORNEY
880 BRYANT ST RM 325
SAN FRANCISCO CA 94103

THE HONORABLE JAMES WILLETT
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PO BOX 990
STOCKTON CA 95201-0990

THE HONORABLE GERALD T SHEA
SAN LUIS OBISPO COUNTY DISTRICT
ATTORNEY
1050 MONTEREY ST RM 450
SAN LUIS OBISPO CA 93408

THE HONORABLE JAMES P FOX
SAN MATEO COUNTY DISTRICT ATTORNEY
400 COUNTY CTR FL 3
REDWOOD CITY CA 94063

THE HONORABLE CHRISTIE STANLEY
SANTA BARBARA COUNTY DISTRICT
ATTORNEY
1105 SANTA BARBARA ST
SANTA BARBARA CA 93101

THE HONORABLE DOLORES CARR
SANTA CLARA COUNTY DISTRICT ATTORNEY
70 W HEDDING ST WEST WING
SAN JOSE CA 95110

THE HONORABLE BOB LEE
SANTA CRUZ COUNTY DISTRICT ATTORNEY
701 OCEAN ST RM 200
SANTA CRUZ CA 95060

THE HONORABLE GERALD C. BENITO
SHASTA COUNTY DISTRICT ATTORNEY
1525 COURT ST FL 3
REDDING CA 96001

THE HONORABLE LAWRENCE ALLEN
SIERRA COUNTY DISTRICT ATTORNEY
PO BOX 457
DOWNIEVILLE CA 95936

THE HONORABLE JAMES ANDRUS
SISKIYOU COUNTY DISTRICT ATTORNEY
PO BOX 986
YREKA CA 96097

THE HONORABLE DAVID W PAULSON
SOLANO COUNTY DISTRICT ATTORNEY
675 TEXAS ST STE 4500
FAIRFIELD CA 94533

THE HONORABLE STEPHEN PASSALACQUA
SONOMA COUNTY DISTRICT ATTORNEY
600 ADMINISTRATION DR RM 212-J
SANTA ROSA CA 95403

THE HONORABLE BIRGIT FLADAGER
STANISLAUS COUNTY DISTRICT ATTORNEY
PO BOX 442
MODESTO CA 95353

THE HONORABLE CARL V ADAMS
SUTTER COUNTY DISTRICT ATTORNEY
446 SECOND ST
YUBA CITY CA 95991

THE HONORABLE GREGG COHEN
TEHAMA COUNTY DISTRICT ATTORNEY
PO BOX 519
RED BLUFF CA 96080

THE HONORABLE MICHAEL HARPER
TRINITY COUNTY DISTRICT ATTORNEY
PO BOX 310
WEAVERVILLE CA 96093

THE HONORABLE PHILLIP J CLINE
TULARE COUNTY DISTRICT ATTORNEY
221 S MOONEY AVE RM 224
VISALIA CA 93291

THE HONORABLE DONALD SEGERSTROM JR
TUOLUMNE COUNTY DISTRICT ATTORNEY
423 N WASHINGTON ST
SONORA CA 95370

THE HONORABLE GREG TOTTEN
VENTURA COUNTY DISTRICT ATTORNEY
800 S VICTORIA AVE
VENTURA CA 93009

THE HONORABLE JEFF REISIG
YOLO COUNTY DISTRICT ATTORNEY
301 SECOND ST
WOODLAND CA 95695

THE HONORABLE PATRICK MCGRATH
YUBA COUNTY DISTRICT ATTORNEY
215 FIFTH ST
MARYSVILLE CA 95901

LOS ANGELES CITY ATTORNEY'S OFFICE
800 CITY HALL EAST
200 N MAIN ST
LOS ANGELES CA 90012

SAN DIEGO CITY ATTORNEY'S OFFICE
CIVIC CENTER PLAZA
1200 THIRD AVE STE 1620
SAN DIEGO CA 92101

SAN JOSE CITY ATTORNEY'S OFFICE
151 W MISSION ST
SAN JOSE CA 95110

SAN FRANCISCO CITY ATTORNEY'S OFFICE
CITY HALL RM 234
SAN FRANCISCO, CA 94102



June 24, 2008

311 California Street, Suite 510
San Francisco, CA 94104
T 415.391.3212
F 415.391.3245
www.asyousow.org

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (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.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **WHOLISTIC BOTANICALS, LLC** doing business as **CHRISTOPHER'S ORIGINAL FORMULAS** ("WB").

Chemicals. These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by WB. The phrase "traditional patent medicines" above is used herein as defined by the California Department of Health Services: "herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and



liquids.” The following products are the subject of this notice:

Product

Listed Substance

Finished Goods:81040	Gas-Eze Capsule	lead and lead compounds
Finished Goods:81050	Slumber Capsules	lead and lead compounds
Finished Goods:81060	Stop-Ache Capsule	lead and lead compounds
Finished Goods:86700	Alfalfa Leaf Capsule	lead and lead compounds
Finished Goods:86704	Astragalus Root Capsule	lead and lead compounds
Finished Goods:86708	Bee Pollen Capsule	lead and lead compounds
Finished Goods:86710	Black Cohosh Root Capsule	lead and lead compounds
Finished Goods:86712	Burdock Root Capsule	lead and lead compounds
Finished Goods:86713	Butcher's Broom Root Capsule	lead and lead compounds
Finished Goods:86714	Cascara Sagrada Bark Capsule	lead and lead compounds
Finished Goods:86716	Cat's Claw Bark Capsule	lead and lead compounds
Finished Goods:86717	Cinnamon Bark Capsule	lead and lead compounds
Finished Goods:86720	Cayenne Pepper Capsule	lead and lead compounds
Finished Goods:86723	Chaste Tree Berry Capsule	lead and lead compounds
Finished Goods:86726	Dandelion Root Capsule	lead and lead compounds
Finished Goods:86728	Dong Quai Capsule	lead and lead compounds
Finished Goods:86729	Echinacea Angustifolia Root Capsule	lead and lead compounds
Finished Goods:86733	Eyebright Herb Capsule	lead and lead compounds
Finished Goods:86735	Fenugreek Seed Capsule	lead and lead compounds
Finished Goods:86738	Garlic Bulb Capsule	lead and lead compounds
Finished Goods:86741	Ginger Root Capsule	lead and lead compounds
Finished Goods:86743	Eleuthero Root Capsule	lead and lead compounds
Finished Goods:86744	Hawthorn Berry Capsule	lead and lead compounds
Finished Goods:86746	Goldenseal Root Capsule	lead and lead compounds
Finished Goods:86748	Horsetail Herb Capsule	lead and lead compounds
Finished Goods:86756	Kelp Plant Capsule	lead and lead compounds
Finished Goods:86760	Mullein Leaf Capsule	lead and lead compounds
Finished Goods:86762	Nettle Leaf Capsule	lead and lead compounds
Finished Goods:86764	Pau D' Arco Bark Capsule	lead and lead compounds
Finished Goods:86766	Red Clover Blossom Capsule	lead and lead compounds
Finished Goods:86768	Red Raspberry Leaf Capsule	lead and lead compounds
Finished Goods:86770	Saw Palmetto Berry Capsule	lead and lead compounds
Finished Goods:86776	Slippery Elm Bark Capsule	lead and lead compounds
Finished Goods:86780	Spirulina Capsule	lead and lead compounds
Finished Goods:86782	St. John's Wort Herb Capsule	lead and lead compounds
Finished Goods:86783	Valerian Root Capsule	lead and lead compounds
Finished Goods:89101	Lower Bowel Capsule	lead and lead compounds
Finished Goods:89102	Blood Stream Capsule	lead and lead compounds
Finished Goods:89103	Liver & Gall Bladder Capsule	lead and lead compounds
Finished Goods:89104	Kidney Formula Capsule	lead and lead compounds
Finished Goods:89105	Bladder Formula Capsule	lead and lead compounds
Finished Goods:89106	Bilberry Eye Capsule	lead and lead compounds
Finished Goods:89107	Pancreas Formula Capsule	lead and lead compounds

June 24, 2008

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Finished Goods:89108	Herbal Calcium Capsule	lead and lead compounds
Finished Goods:89109	Sinus Plus Capsule	lead and lead compounds
Finished Goods:89110	Blood Circulation Capsule	lead and lead compounds
Finished Goods:89111	Appetite Formula Capsule	lead and lead compounds
Finished Goods:89112	Glandular System Capsule	lead and lead compounds
Finished Goods:89113	Relax-Eze Capsule	lead and lead compounds
Finished Goods:89114	Female Tonic Capsule	lead and lead compounds
Finished Goods:89115	Lung & Bronchial Capsule	lead and lead compounds
Finished Goods:89116	Cold Season Capsule	lead and lead compounds
Finished Goods:89117	Immucalm Capsule	lead and lead compounds
Finished Goods:89118	Immune System Capsule	lead and lead compounds
Finished Goods:89119	Chest Formula Capsule	lead and lead compounds
Finished Goods:89120	Herbal Eyebright Capsule	lead and lead compounds
Finished Goods:89121	Female Reproductive Capsule	lead and lead compounds
Finished Goods:89122	Male Urinary Tract Capsule	lead and lead compounds
Finished Goods:89123	Hormonal Changease Capsule	lead and lead compounds
Finished Goods:89124	Liver Transition Capsule	lead and lead compounds
Finished Goods:89125	Herbal Iron Capsule	lead and lead compounds
Finished Goods:89126	False Unicorn & Lobelia Capsule	lead and lead compounds
Finished Goods:89127	Pre-Natal Capsule	lead and lead compounds
Finished Goods:89128	Complete Tissue & Bone Capsule	lead and lead compounds
Finished Goods:89129	Herbal Libido Capsule	lead and lead compounds
Finished Goods:89130	Joint Formula Capsule	lead and lead compounds
Finished Goods:89131	Infection Formula Capsule	lead and lead compounds
Finished Goods:89132	Thyroid Maintenance Capsule	lead and lead compounds
Finished Goods:89133	Master Gland Capsule	lead and lead compounds
Finished Goods:89134	MindTrac Capsule	lead and lead compounds
Finished Goods:89134s	MindTrac Sample	lead and lead compounds
Finished Goods:89135	Prostate Plus Capsule	lead and lead compounds
Finished Goods:89136	Quick Colon #1 Capsule	lead and lead compounds
Finished Goods:89138	Vitalerbs Capsule	lead and lead compounds
Finished Goods:89139	Herbal Thyroid Capsule	lead and lead compounds
Finished Goods:89140	Echinacea & Goldenseal Capsule	lead and lead compounds
Finished Goods:89141	Male Tonic Capsule	lead and lead compounds
Finished Goods:89142	Soothing Digestion Capsule	lead and lead compounds
Finished Goods:89146	Heavy Mineral Bugleweed Capsule	lead and lead compounds
Finished Goods:89147	Adrenal Formula Capsule	lead and lead compounds
Finished Goods:89156	Memory Plus Capsule	lead and lead compounds
Finished Goods:89170	Bee Power Energy Capsule	lead and lead compounds
Finished Goods:89171	Jurassic Green Capsule	lead and lead compounds
Finished Goods:89173	Metaburn Herbal Weight Capsule	lead and lead compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

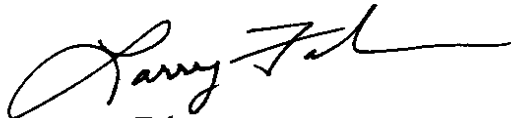
Duration of violations. Each of these ongoing violations has occurred on every day since at least June 24, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

This notice of violation supplements the previous notice of violation issued by AYS against WB on August 17, 2007, regarding nine products. Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227 Fax: 707-763-9227

Very truly yours,

A handwritten signature in black ink, appearing to read "Larry Fahn", with a long horizontal flourish extending to the right.

Larry Fahn
Executive Director

Enclosures

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Wholistic Botanicals, LLC doing
business as Christopher's Original Formulas)

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §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 has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultations, and on all 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 plaintiffs' 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 §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: June 24, 2008



Andrew L. Packard

Attachment(s): (for Attorney General Copy **only**)

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

HISTORY

1. New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

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, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On June 24, 2008, I served the following documents:

- Notice of Violation 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 parties listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Robert Scott, President
Wholistic Botanicals, L.L.C.
dba Christopher's Original Formulas
155 W. 2050 N
Spanish Fork, UT 84660

On June 24, 2008, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

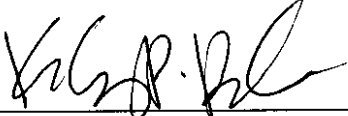
Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On June 24, 2008, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- 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 United States Postal Service mail box for delivery by First Class Mail.

Executed on June 24, 2008, at San Francisco, California.



Karalyn P. Buchner

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