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4

5 Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER  
6  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES  
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11 ENVIRONMENTAL RESEARCH CENTER, a ) Case No. BC 446151  
non-profit California corporation, )  
12 Plaintiff, ) Hon: Barbara Scheper  
13 ) [PROPOSED] STIPULATED CONSENT  
14 VITATECH INTERNATIONAL, INC.; ) JUDGMENT  
BODYWISE INTERNATIONAL, LLC; DOES )  
15 2 through 10; )  
16 Defendants. )  
17 )  
18 )

19 IT IS HEREBY STIPULATED AND AGREED by the Parties hereto, as follows:

20 **WHEREAS:**

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

24 B. Defendant VITATECH INTERNATIONAL INC. ("VITATECH") is a corporation  
25 organized under the laws of the State of California and a person doing business within the

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 meaning of H&S Code §25249.11 with an office at 2832 Dow Ave., Tustin, CA 92780.  
2 Defendant BODY WISE INTERNATIONAL, LLC. (“BODY WISE”) is a limited liability  
3 company organized under the laws of the State of Delaware and a person doing business within  
4 the meaning of H&S Code §25249.11 with an office at 17101 Armstrong Avenue, Suite 101,  
5 Irvine, CA 92614-5738. “Parties” means ERC, VITATECH and BODY WISE. “Defendants”  
6 means VITATECH and BODY WISE. The name of the Products covered under this Consent  
7 Judgment are

8 Female Advantage® Balance

9 Joint Complete™

10 Workout Formula®

11 The above three products are referred to herein as the “Products.” Three other Body Wise  
12 products tested by ERC are Right Choice® AM, AG Immune®, and OxyG2®, which products are  
13 sometimes referred to herein collectively as “Non-Infringing Products.” Only the Products are  
14 subject to the injunctive provisions herein. Only the Products and the Non-Infringing Products  
15 are the subject of this Consent Decree;

16 C. On February 27, 1987, the State of California officially listed the chemical lead as a  
17 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code §  
18 25249.8;

19 D. On October 1, 1992, the State of California officially listed the chemicals lead and  
20 lead compounds as chemicals known to cause cancer, pursuant to California Health and Safety  
21 Code § 25249.8;

22 E. The Products have allegedly been manufactured and/or sold by VITATECH and/or  
23 BODY WISE for use in California since at least October 2009.

24 F. On July 7, 2010 and January 14, 2011, ERC served VITATECH and then BODY  
25 WISE and each of the appropriate public enforcement agencies with a document entitled “60-Day

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 Notice" that provided notice that Defendants were in violation of Proposition 65 for failing to  
2 warn purchasers and individuals that the use of the Products exposes them to lead, a chemical  
3 known to the State of California to cause cancer and/or reproductive toxicity ("**Prop. 65**  
4 **Notices**") (a copy of the 60-Day Notices are attached hereto as **Exhibit B**);

5 G. Thereafter, ERC determined that, based on the recommended dosages on the label  
6 and testing of the Non-Infringing Products for lead, that the Non-Infringing Products did not  
7 cause exposures of lead that violate Proposition 65;

8 H. The Action was brought by ERC in the public interest at least sixty (60) days after  
9 ERC provided notice of the Proposition 65 violations to Defendants and the appropriate public  
10 enforcement agencies and none of the public enforcement agencies had commenced and begun  
11 diligently prosecuting an action against Defendants for such violations;

12 I. For purposes of this Consent Judgment only, the Parties stipulate that this Court  
13 has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties,  
14 that venue is proper in this Court, and that this Court has jurisdiction to enter a Consent  
15 Judgment pursuant to the terms set forth herein;

16 J. The Parties enter into this Consent Judgment to settle disputed claims between  
17 them and to avoid prolonged litigation. By execution of this Consent Judgment, Defendants do  
18 not admit any violations or the applicability of Proposition 65, do not admit that the Products are  
19 unsafe, and do not admit that the exposure to lead from the dose recommended on the Products'  
20 label exceeds 0.5 micrograms (**mcg**) after deduction for exposure caused solely by "naturally  
21 occurring" lead. Except for the representations made above, nothing in this Consent Judgment  
22 shall be construed as an admission by Defendants or Plaintiff of any fact, issue of law, or  
23 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as  
24 an admission by Defendants or Plaintiff of any fact, issue of law, or violation of law;

25 K. Except as expressly provided herein, nothing in this Consent Judgment shall

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or  
2 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,  
3 responsibilities, and duties of any Party to this Consent Judgment; and,

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

6  
7 **NOW, THEREFORE**, in consideration of the promises, covenants and agreements herein  
8 contained, the sufficiency and adequacy of which is hereby acknowledged by the Parties:

9 1. **Injunctive Relief.** On and after the Effective Date of this Consent Judgment,  
10 Defendants shall not manufacture for sale in the State of California, distribute into the State of  
11 California, or directly sell in the State of California the Products unless each such unit of the  
12 Products bears the following warning statement on its individual unit label packaging:

13 **WARNING: This product contains lead, a substance known to the State of**  
14 **California to cause birth defects or other reproductive harm. DO NOT USE**  
15 **DURING PREGNANCY.**

16 The warning statement shall be prominent and displayed on the unit packaging of the Products  
17 with such conspicuousness, as compared with other words, statements, or designs so as to render  
18 it likely to be read and understood by an ordinary individual purchasing or using the Products.

19 The advertising of one or more of the Products on a website accessible to both California and  
20 non-California consumers shall not constitute a violation of this injunction so long as sales of the  
21 Products are not made to California addresses.

22 2. Defendants reserve the right to manufacture, distribute or directly sell the Products  
23 in the State of California without the warning set forth in Section 1 of this Consent Judgment  
24 upon reformulating or relabeling the Products so that the daily dose recommended on the  
25 Products' label contains less than 0.5 micrograms (mcg) of lead, excluding: a) the amounts of

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 naturally occurring lead in the ingredients listed in accordance with the Attorney General's  
2 Stipulation Modifying Consent Judgments in *People v. Warner Lambert et al.* (San. Fran. Sup.  
3 Crt. Case No. 984503) or b) excess exposure caused solely by "naturally occurring" lead at the  
4 "lowest level currently feasible," as set forth in 27 California Code of Regulations § 25501(a).  
5 Should Defendants in the future manufacture, distribute or directly sell the Products in California  
6 pursuant to this Section 2 of this Consent Judgment, at least 45 days beforehand and for the first  
7 two years thereafter, Defendants shall provide any test results for the Products and related  
8 documentation to ERC within 30 working days of completion of the testing; and shall retain all  
9 such test results and related documentation for a period of at least two years.

10         3. All testing pursuant to this Consent Judgment shall be performed by a laboratory  
11 certified by the California Environmental Laboratory Accreditation Program for the analysis of  
12 heavy metals or a laboratory that is approved by, accredited by, or registered with the United  
13 States Food & Drug Administration for the analysis of heavy metals. The method of selecting  
14 samples for testing must comply with the regulations of the Food and Drug Administration as set  
15 forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section  
16 111.80(c). Testing for lead shall be performed using Inductively Coupled Plasma-Mass  
17 Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity  
18 reagents<sup>1</sup> or any other testing method agreed upon in writing by the parties. Nothing in this  
19 Consent Judgment shall limit Defendants' ability to conduct, or require that others conduct,  
20 additional testing of the Products, including the raw materials used in their manufacture. This  
21 Consent Judgment, including the testing and sampling methodology set forth in this paragraph, is  
22 the product of negotiation and compromise, and is accepted by the parties for purposes of  
23 settling, compromising, and resolving issues disputed in this action, including future compliance.

24 \_\_\_\_\_  
25 <sup>1</sup> See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and  
Children's Vitamins, *J. Agric. Food Chem.* 2008, 56, 6892-96.

1 by Defendants with this Consent Judgment, and shall not be used for any other purpose, or in any  
2 other matter and, except for the purpose of determining future compliance with this Consent  
3 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed  
4 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g).

5       4.       **Civil Penalty Assessment.** Defendants agree to pay a civil penalty in the amount  
6 of \$7,050.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff ERC shall remit 75% of  
7 this amount to the State of California pursuant to Health & Safety Code §25192.

8       5.       **Payment In Lieu of Further Civil Penalties.** Defendants agree to make an  
9 additional payment in lieu of further civil penalties in the amount of \$29,950.00 to ERC for  
10 projects to reduce exposures to toxic chemicals, and to increase consumer, worker and  
11 community awareness of the health hazards posed by toxic chemicals.

12       6.       **Reimbursement of Plaintiff's Fees and Costs.** Defendants agree to reimburse  
13 Plaintiff's reasonable investigative, expert and attorneys' fees and costs incurred as a result of  
14 investigating and bringing this matter to the attention of Defendants, of bringing and pursuing  
15 this action, and of negotiating a settlement in the public interest, in the total amount of  
16 \$33,500.00.

17       7.       **Payment Schedule.** Pursuant to Sections 4 , 5 and 6 herein, Defendants agree to  
18 remit the total amount of \$70,500.00 to Plaintiff, payable to: the "Law Offices of Gideon Kracov  
19 Client Trust Account" and remitted to the Law Office of Gideon Kracov at the law firm's address  
20 noted in the Notice provision below. The schedule for the payment of these funds shall be as  
21 follows: (a) an initial payment of \$30,000.00 on or before September 23, 2011(to be held in trust  
22 by ERC's counsel until approval of this Consent Judgment, or if not approved within 45 days of  
23 submission to the Court, then promptly returned to Defendants); and, if this Consent Judgment is  
24 approved, (b) \$13,500.00 payment on or before the 23<sup>rd</sup> day for each of the three consecutive  
25 months thereafter (to be held in trust by ERC until approval of this Consent Judgment, or if not

1 approved within 45 days of submission to the Court, then promptly returned to Defendants). In  
2 the event that the payment due on or before September 23, 2011 is timely remitted, but thereafter  
3 any other subsequent payments owed under this Consent Judgment is/are not remitted on or  
4 before its due date, Defendant BODY WISE shall be deemed to be in default of its obligations  
5 under this Consent Judgment. Plaintiff shall provide written notice to Defendants of any default;  
6 if Defendant BODY WISE fails to remedy the default within five (5) business days of such  
7 notice, then all future payments due hereunder shall become immediately due and payable from  
8 BODY WISE, with the prevailing federal funds rate applying to all interest accruing on unpaid  
9 balances due hereunder, beginning on the due date of the funds in default.

10 **8. Plaintiff's Release of Defendants; includes A "Downstream Release."** Except  
11 for Defendants' obligations under this Consent Judgment, Plaintiff, acting on behalf of itself and  
12 acting on behalf of the general public, permanently and fully releases VITATECH and BODY  
13 WISE, their parents, subsidiaries, affiliates (including those companies that are under common  
14 ownership and/or common control), suppliers, manufacturers, shareholders, directors, members,  
15 officers, employees, and attorneys, all DOES, and each entity to whom each of them directly or  
16 indirectly distributed or sold the Products or the Non-Infringing Products, including but not  
17 limited to distributors, wholesalers, customers, retailers, franchisees, and any other person or  
18 entity in the course of doing business who distributed, marketed or sold the Products or the Non-  
19 Infringing Products, from all claims of any nature asserted in the Prop. 65 Notices.

20 **9. Limits of Release.** Nothing in this release is intended to apply to any  
21 occupational or environmental exposures arising under Proposition 65 nor shall it apply to any of  
22 Defendants' products other than the Products and the Non-Infringing Products.

23 **10. Release of Environmental Research Center.** VITATECH and BODY WISE, by  
24 this Consent Judgment, waive all rights to institute any form of legal action against ERC for all  
25 actions or statements made or undertaken by ERC in the course of seeking enforcement of

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 Proposition 65 against the Defendants by means of the Prop. 65 Notices.

2       **11. Motion for Approval of Consent Judgment/Notice to the California Attorney**  
3 **General's Office.** Upon execution of this Consent Judgment by the Parties, Plaintiff shall notice  
4 a Motion for Approval & Entry of Consent Judgment in the Los Angeles Superior Court pursuant  
5 to 11 California Code of Regulations §3000, *et seq.* This motion shall be served upon all of the  
6 Parties to the Action and upon the California Attorney General's Office. In the event that the  
7 Court fails to approve and order entry of the judgment, this Consent Judgment shall become null  
8 and void upon the election of any Party as to them and upon written notice to all of the Parties to  
9 the Action pursuant to the notice provisions herein. Defendants and ERC shall use good faith,  
10 reasonable efforts to support entry of this Consent Judgment in the form submitted to the Office  
11 of the Attorney General. If the Attorney General objects in writing to any term in this Consent  
12 Judgment, the Parties shall use good faith, reasonable efforts to resolve the concern in a timely  
13 manner and prior to the hearing on the motion to approve this Consent Judgment. If the Attorney  
14 General elects to file papers with the Court stating that the People shall appear at the hearing for  
15 entry of this Consent Judgment so as to oppose entry of the Consent Judgment, then a party may  
16 withdraw from this Consent Judgment prior to the date of the hearing, with notice to all Parties  
17 and the Attorney General, and upon such notice this Consent Judgment shall be null and void and  
18 any payments made pursuant to Section 7 of this Consent Judgment shall be promptly returned to  
19 ERC.

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

23       **13. Enforcement.** In the event that a dispute arises with respect to any of the  
24 provisions of this Consent Judgment, this Consent Judgment may be enforced pursuant to Code  
25 of Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any such

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 dispute shall be awarded all reasonable fees and costs incurred.

2 14. **Governing Law.** The terms of this Consent Judgment shall be governed by the  
3 laws of the State of California.

4 15. **Notices.** All correspondence and notices required to be provided under this  
5 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail  
6 addressed as follows. All correspondence to ERC shall be mailed to:

7 Environmental Research Center  
8 5694 Mission Center Road, #199  
9 San Diego, CA 92108

9 And to:

10 Gideon Kracov  
11 801 S. Grand Ave., 11<sup>th</sup> Fl.  
12 Los Angeles, CA 90017

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13 All correspondence to BODY WISE shall be mailed to:

14 Body Wise International, LLC  
15 17101 Armstrong Avenue, Suite 10  
16 Irvine, CA 92614-5738  
17 Attention: Marty Pajor

17 And to:

18 Michael T. Hornak  
19 Rutan & Tucker, LLC  
20 611 Anton Blvd., Suite 1400  
21 Costa Mesa, CA 92626

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21 All correspondence to Defendants shall be mailed to:

22 VitaTech, International, Inc.  
23 2802 Dow Ave.  
24 Tustin, CA 92780  
25 Attention: Thomas T. Tierney

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26 [PROPOSED] STIPULATED CONSENT JUDGMENT

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And to:

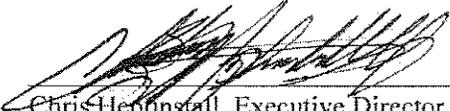
Michael J. Steponovich, Jr.  
Steponovich & Associates  
A Professional Law Corporation  
701 South Parker Street, Suite 7500  
Orange, CA 92868

16. **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. This Consent Judgment may be modified only upon the written agreement of the Parties.

17. **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.

18. **Authorization.** The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: 9/14/11

By:   
Chris Hepningall, Executive Director  
ENVIRONMENTAL RESEARCH CENTER

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas T. Tierney, President  
VITATECH INTERNATIONAL, INC.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
William Farley, Managing Member  
BODY WISE INTERNATIONAL, LLC

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And to:

Michael J. Steponovich, Jr.  
Steponovich & Associates  
A Professional Law Corporation  
701 South Parker Street, Suite 7500  
Orange, CA 92868

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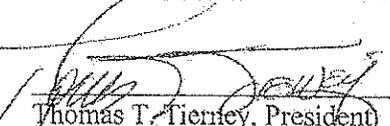
18. **Authorization.** The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Chris Heptinstall, Executive Director  
ENVIRONMENTAL RESEARCH CENTER

DATED: 9-13-11

By:  \_\_\_\_\_

Thomas T. Tierney, President  
VITATECH INTERNATIONAL, INC.

DATED: \_\_\_\_\_

By: \_\_\_\_\_

William Farley, Managing Member  
BODY WISE INTERNATIONAL, LLC

[PROPOSED] STIPULATED CONSENT JUDGMENT

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And to:

Michael J. Steponovich, Jr.  
Steponovich & Associates  
A Professional Law Corporation  
701 South Parker Street, Suite 7500  
Orange, CA 92868

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18. **Authorization.** The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
Chris Heptinstall, Executive Director  
ENVIRONMENTAL RESEARCH CENTER

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
Thomas T. Tierney, President  
VITATECH INTERNATIONAL, INC.

DATED: 9/15/11 By: W. Farley  
William Farley, Managing Member  
BODY WISE INTERNATIONAL, LLC

1 IT IS SO ORDERED.

2 Dated: \_\_\_\_\_

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

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7 EXHIBIT A - July 7, 2010 and January 14, 2011 Prop. 65 Notices

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26 [PROPOSED] STIPULATED CONSENT JUDGMENT

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EXHIBIT A

Prop 65 Notices



## Environmental Research Center

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

July 07, 2010

*VIA CERTIFIED MAIL*  
Current President or CEO  
VitaTech International, Inc.  
2802 Dow Ave  
Tustin, CA 92780

Re: Notice of Violation against VitaTech International, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Tel. (619) 309-4194. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by VitaTech International, Inc.

This letter constitutes notification that VitaTech International, Inc., located at 2802 Dow Avenue, Tustin, CA 92780 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

VitaTech International, Inc. is exposing people to lead from the following products:

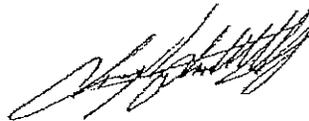
- Right Choice AM Essential Nutrition
- AG Immune
- Workout Formula Performance Nutrition
- Oxy G2 Performance Nutrition
- Joint Complete Anti-Aging
- Balance

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. VitaTech International, Inc. is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party. ERC remains open to discussing the possibility of resolving its grievances short of formal litigation. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Karen A. Evans, 4218 Biona Pl., San Diego, CA 92116, telephone no.: 619-640-8100, e-mail: [kaevans1@cox.net](mailto:kaevans1@cox.net).

Sincerely,



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Chris Heptinstall  
Executive Director, Environmental Research Center

cc: Karen A. Evans

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
July 7, 2010  
Page 3

Attachments  
OEHHA Summary  
Certificate of Merit (w/o AG attachments)  
Certificate of Service  
List of Service

**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 550 chemicals have been listed as of May 1, 1996. 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.

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**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.

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

I, Karen A. Evans hereby declare:

1. This Certificate of Merit accompanies the Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead from products that it manufactures and distributes. Please refer to the Notice of Violation for additional details regarding the alleged violations.
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 alleged exposure to the listed chemical that is the subject of the action. In particular, I have reviewed the resulting data from the laboratory that conducted the testing to determine the concentration of lead in the products identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for lead. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through oral exposure (ingestion).
4. Based on my consultation with persons of appropriate experience, the results of the laboratory testing, as well as published studies on lead, it is clear that there is sufficient evidence that

human exposures exist from exposure to the products from the noticed party. Furthermore, as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: July 07, 2010



---

Karen A. Evans  
Attorney for Environmental Research Center

**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On July 07, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"**

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

Current President or CEO  
VitaTech International, Inc.  
2802 Dow Ave  
Tustin, CA 92780

On July 07, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT (including supporting documentation required by Title 11 CCR §3102)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

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

On July 07, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

---

Executed on July 07, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

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

July 7, 2010

Page 9

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
Post Office Drawer D  
Independence, CA 93526

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95336

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

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

July 7, 2010

Page 10

|

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95603

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92112

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95202

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downsville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
425 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

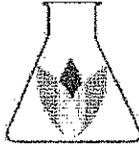
District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 Jrd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Rooms 234  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113



## Environmental Research Center

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

January 14, 2011

### ***VIA CERTIFIED MAIL***

Current President or CEO  
Body Wise International, LLC  
17101 Armstrong Ave Suite 101  
Irvine, CA 92614

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

**Re: Notice of Violation against Body Wise International, LLC for Violation of California Health & Safety Code Section 25249.6**

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Tel. (619) 309-4194, Executive Director: Chris Heptinstall. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Body Wise International, LLC.

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This letter constitutes notification that Body Wise International, LLC, located at 17101 Armstrong Ave, Suite 101, Irvine, CA 92614, has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this Company has manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since January 14, 2008, 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 purchasers and users.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, the primary route of exposure for consumers has been oral through ingestion, but may also occur through the inhalation and/or dermal contact route of exposure.

Body Wise International, LLC is exposing people to lead from the following products:

**BodyWise International Oxy G2 Performance Nutrition**  
**BodyWise International Joint Complete Anti-Aging**  
**BodyWise International Workout Formula**  
**BodyWise International Female Advantage Balance**

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Body Wise International, LLC is in violation of Proposition 65 because the Company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Body Wise International, LLC unless it agrees in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, [gk@gideonlaw.net](mailto:gk@gideonlaw.net).

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
January 14, 2011  
Page 3

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Body Wise International, LLC only)

Additional Supporting Information for Certificate of Merit (to AG only)

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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Body Wise International, LLC**

I, Gideon Kracov, declare:

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



Dated: January 14, 2011

\_\_\_\_\_  
Gideon Kracov, Attorney At Law

**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”**

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

Current President or CEO  
Body Wise International, LLC  
17101 Armstrong Ave Suite 101  
Irvine, CA 92614

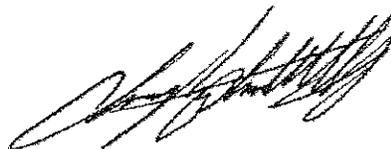
On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

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

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

---

Executed on January 14, 2011, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

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

January 14, 2011

Page 7

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 212f  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

PROOF OF SERVICE

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I, Gideon Kracov, being duly sworn, deposes and says:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 801 S. Grand Ave., 11<sup>th</sup> Fl., LA, CA 90017. On 9/21, 2011, I served this list of persons with the following documents: **[PROPOSED] CONSENT JUDGMENT; MOTION TO APPROVE; DECLS. OF KRACOV AND HEPTINSTALL**

The documents were served on:

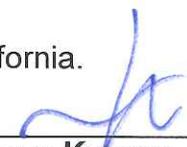
Mike Hornak  
Rutan & Tucker, LLP  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626

Michael J. Steponovich, Jr.  
STEPONOVICH & ASSOCIATES  
701 South Parker Street, Suite 7500  
Orange, California 92868

✓ by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at 801 S. Grand Ave., Los Angeles, California, addressed as set forth above. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 9/21, 2011 at Los Angeles, California.

  
\_\_\_\_\_  
Gideon Kracov