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7 Attorney for Plaintiff Environmental Research Center

8 Martin Ozinga
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15 Attorneys for Defendants AMS Health Sciences, Inc.
16 And AMS Health Sciences, LLC

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**

19 **ENVIRONMENTAL RESEARCH CENTER,**
20 **a California non-profit corporation**

21 **Plaintiff,**

22 **v.**

23 **AMS HEALTH SCIENCES, INC; AMS**
24 **HEALTH SCIENCES, LLC and DOES 1-100**

25 **Defendants.**

26 **Case No. CGC-11-513255**

27 **[PROPOSED] AMENDED**
28 **STIPULATED CONSENT**
JUDGMENT; [PROPOSED] ORDER

[Health & Safety Code Section 25249.5
et seq.]

ACTION FILED: August 10, 2011
TRIAL DATE: Not Set

29 **1. INTRODUCTION**

30 **1.1** On August 10, 2011, Plaintiff Environmental Research Center (“ERC”), a non-profit
31 corporation, as a citizen enforcer, and in the public interest, initiated this action by filing a

1 Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the provisions of
2 Cal. Health & Safety Code Section 25249.5 et seq. (“Proposition 65”), against Defendant AMS
3 Health Sciences, Inc. and its successor AMS Health Sciences LLC (“collectively AMS”). In
4 this action, ERC claims that products manufactured and distributed by AMS contain lead, a
5 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and exposes
6 consumers at a level requiring a Proposition 65 warning. These products are: AMS Health
7 Sciences Saba Weight-Loss Formula Borojo Juice; AMS Health Sciences Uropower; AMS Health
8 Sciences Weight Loss Formula Natural A.C.E.; AMS Health Sciences Gold Plus Antioxidant;
9 AMS Health Sciences Co-Clenz; and AMS Health Sciences Inc. Am-300, 90 Caplets.(the “Covered
10 Products”). ERC and AMS shall sometimes be referred to individually as a “Party” or
11 collectively as the “Parties.”
12
13

14 **1.2** ERC is a California non-profit corporation dedicated to, among other causes, helping
15 safeguard the public from health hazards by bringing about a reduction in the use and misuse of
16 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and
17 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling
18 this case in the public interest.
19

20 **1.3** AMS Health Sciences, Inc. was a business entity that employed ten or more persons.
21 AMS Health Sciences, LLC is a business entity that employs ten or more persons and as of
22 September of 2011 is the successor in interest to AMS Health Sciences, Inc. Currently, AMS
23 Health Sciences, LLC arranges the manufacture, distribution and sale of the Covered Products.
24

25 **1.4** The Complaint is based on allegations contained in two Notices of Violation dated July
26 9, 2010 and January 14, 2011 (“Notices of Violation”) that were served on the California
27 Attorney General, other public enforcers and AMS. A true and correct copy of these Notices of
28

1 Violation is attached hereto as Exhibit A. More than 60-days have passed since these Notices of
2 Violation were mailed and no public enforcement entity has filed a complaint against AMS with
3 regard to the Covered Products or the alleged violations.
4

5 **1.5** ERC's Notices of Violation and the Complaint allege that the Covered Products expose
6 persons in California to lead without first providing clear and reasonable warnings, in violation
7 of Cal. Health & Safety Code Section 25249.6. AMS denies all material allegations contained in
8 the Notices of Violation and Complaint and specifically denies that the Covered Products require
9 a Proposition 65 warning or otherwise cause harm to any person.
10

11 **1.6** The Parties have entered into this Consent Judgment in order to settle, compromise and
12 resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
13 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of
14 their respective officers, directors, shareholders, employees, agents, parent companies,
15 subsidiaries, divisions, affiliates, franchises, licensees, customers, distributors, wholesalers, or
16 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or
17 liability, including without limitation, any admission concerning any alleged violation of
18 Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in any
19 administrative or judicial proceeding or litigation in any court, agency, or forum, except with
20 respect to an action seeking to enforce the terms of this Consent Judgment.
21

22 **1.7** The Effective Date of this Consent Judgment shall be the date on which it is entered as
23 a Judgment by this Court.
24

25 **1.8** Since approximately October of 2011, AMS represents that the company has been
26 providing warnings on the Covered Products that are conspicuously affixed to or printed upon
27 the product's label of each of the Covered Products. With respect to AMS Health Sciences
28

1 Weight Loss Formula Natural ACE, subsequent to the Notice of Violation, ERC conducted
2 additional testing that revealed that this product's lead exposure is below 0.50 micrograms per day
3 based on the maximum dose recommended on the label. Warnings under Section 3.2 are required
4 for all Covered Products unless otherwise mandated under Section 3.1 after the Effective Date.
5

6 **2. JURISDICTION AND VENUE**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over the allegations of violations contained in the Complaint and personal
9 jurisdiction over AMS as to the acts alleged in the Complaint, that venue is proper in San
10 Francisco County, and that this Court has jurisdiction to enter this Consent Judgment as a full
11 and final resolution of all claims which were or could have been asserted in this action based on
12 the facts alleged in the Notices of Violation and the Complaint.
13

14 **3. INJUNCTIVE RELIEF, WARNINGS AND TESTING**

15 **3.1** (a) On or after the Effective Date, AMS shall be permanently enjoined from
16 manufacturing for sale in California, distributing into California, or directly selling to a
17 consumer in California any Covered Product for which the maximum daily dose recommended
18 on the label contains more than 0.50 micrograms of lead unless such Covered Product complies
19 with the warning requirement set forth in Section 3.2 below.
20
21

22 (b) No warning under Proposition 65 and Section 3.2 is required for AMS Health
23 Sciences Weight Loss Formula Natural ACE used by a California consumer unless the lead levels
24 increase in such Covered Product first manufactured after the Effective Date such that lead levels
25 exceed 0.50 micrograms in the maximum recommended daily dose on the label.
26
27
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1 **3.2 Clear and Reasonable Warnings**

2 For those Covered Products that are subject to the warning requirement of Section 3.1, AMS
3 shall provide the following warning as specified below:
4

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

7 The term “cancer” shall be used in the warning only if the maximum daily dose recommended
8 on the label contains more than 15 micrograms of lead.

9 In determining the microgram per day level for this Consent Judgment, AMS shall utilize the
10 formula and testing protocol set forth in Sections 3.4 and 3.5.
11

12 Notwithstanding the foregoing, if the test results utilizing the formula and testing protocol
13 pursuant to Sections 3.4 and 3.5 herein show that a Covered Product referenced in Section 1.1
14 above contains no more than 0.50 micrograms of lead, using the maximum daily dose
15 recommended, no labeling warning is required and AMS is not subject to the warning
16 requirement of Proposition 65.
17

18 **3.3** The warning shall be prominently affixed to or printed upon the product’s label of each of
19 the Covered Products so as to be clearly conspicuous, as compared with other statements or
20 designs on the label as to render it likely to be read and understood by an ordinary purchaser or
21 user of the product.
22

23 **3.4 Formula for Determining Microgram Per Day Level**

24 For purposes of this Consent Judgment, daily lead exposure levels shall be measured in
25 micrograms, and shall be calculated using the following formula: micrograms of lead per gram
26 of product, multiplied by grams of product per serving of the product (using the largest serving
27 size appearing on the product label), multiplied by servings of the product per day (using the
28

1 largest number of servings in a recommended dosage appearing on the product label), which
2 equals micrograms of lead exposure per day.

3 **3.5 Testing**

4
5 **3.5.1** Once a year, on or before the anniversary of the entry of the Consent Judgment, AMS
6 shall test, or cause to be tested, a randomly selected sample of each of the Covered Products
7 described in Section 1.1 above (in the form intended for sale to California, manufactured after
8 the date of the prior year's random test)) for lead content. Testing for lead shall be performed
9 using Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") and closed-vessel,
10 microwave-assisted digestion employing high-purity reagents or any other testing method
11 subsequently agreed upon in writing by the Parties. All testing AMS shall retain all test results
12 for a period of two years from the date of each respective test.

13
14 **3.5.2** All testing pursuant to this Consent Judgment shall be performed by a laboratory that is
15 approved by, accredited by, or registered with the United States Food & Drug Administration for
16 the analysis of heavy metals. Nothing in this Consent Judgment shall limit AMS's ability to
17 conduct, or require that others conduct, additional testing of the Covered Products, including the
18 raw materials used in their manufacture.

19 **3.6 No Obligations Imposed Upon AMS Health Sciences, Inc. for Covered Products** 20 **Sold After September 30, 2011**

21
22 It is understood and acknowledged that AMS Health Sciences, LLC is the successor in
23 interest to the business formerly conducted by AMS Health Sciences, Inc. by virtue of an Asset
24 Purchase Agreement dated on or about September 30, 2011 and that AMS Health Sciences, Inc.
25 currently is no longer engaged in the business of manufacturing or distributing any of the
26 Covered Products but will remain fully liable for all claims for products it manufactured and
27
28

1 distributed prior to September 30, 2011 (except with respect to those claims that are released
2 pursuant to Section 8 of this Consent Judgment.

3
4 **4. SETTLEMENT PAYMENT**

5 **4.1** In full and final satisfaction of all potential civil penalties, payment in lieu of civil
6 penalties, attorneys' fees, and costs, AMS shall make a total payment of \$30,000.00, payable in
7 five monthly installments of \$6,000.00 each as set forth below, with the first payment within ten
8 (10) business days of receiving the Notice of Entry of this Consent Judgment and each
9 successive payment within thirty (30) days of the prior payment. The payments shall be
10 delivered to the Law Office of Michael Freund and shall cover the following:

11
12 **4.2** \$1,675.00 as civil penalties pursuant to California Health & Safety Code section
13 25249.7(b)(1). Of this amount, \$1,256.25 shall be payable to OEHHA, and \$418.75 shall be
14 payable to Environmental Research Center. Cal. Health & Safety Code §§ 25249.12(c)(1) & (d).
15 ERC's counsel shall forward the civil penalty payment to OEHHA, and send a copy of the
16 transmittal letter to counsel for AMS.
17

18 **4.3** \$24,359.50 to Michael Freund and \$3,965.50 to Karen A. Evans as reimbursement of
19 ERC's attorneys' fees.

20 **4.4** All of AMS installments shall be payable to Michael Freund (and Karen Evans for her
21 attorney's fees) except for the civil penalty payment payable to OEHHA.
22

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 **5.1** This Consent Judgment may be modified only by written agreement and stipulation of
25 the Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent
26 judgment by the Court.
27
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1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

2 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
3 Consent Judgment.

4 **6.2** Only after it complies with Section 10 below, any Party may, by motion or application
5 for an order to show cause filed with this Court, enforce the terms and conditions contained in
6 this Consent Judgment. The prevailing party may request that the Court award its reasonable
7 attorneys' fees and costs associated with such motion or application. As used in the preceding
8 sentence, the term "prevailing party" means a party who is successful in obtaining relief more
9 favorable to it than the relief that the other party was amenable to providing during the parties'
10 good faith attempt to resolve the dispute that is the subject of such enforcement action.
11

12 **7. APPLICATION OF CONSENT JUDGMENT**

13 This Consent Judgment shall apply to, be binding upon and benefit the Parties, and their
14 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
15 divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers,
16 retailers and all other entities in the distribution chain of any Covered Product, the predecessors,
17 successors and assigns of any of them, and ERC on its own behalf and in the public interest as
18 set forth in Paragraph 8.
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22 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on behalf
24 of itself, and in the public interest, and AMS, of any alleged violation of Proposition 65 or its
25 implementing regulations, and fully and finally resolves all claims that have been or could have
26 been asserted in this action against AMS for failure to provide Proposition 65 warnings for the
27 Covered Products regarding lead. ERC, on behalf of itself, and in the public interest, hereby
28

1 releases and discharges AMS and its respective officers, directors, shareholders, employees,
2 agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees,
3 customers, distributors, wholesalers, retailers, and all other entities in the distribution chain of
4 any Covered Product, and the predecessors, successors and assigns of any of them (collectively,
5 “Released Parties”), from any and all claims asserted, or that could have been asserted, in this
6 action arising from or related to the alleged failure to provide Proposition 65 warnings for the
7 Covered Products regarding lead as set forth in the Notices of Violation.
8

9
10 **8.2** In consideration of this agreement contained herein, and for good and valuable
11 consideration, the receipt and sufficiency of which are hereby acknowledged, ERC hereby fully
12 releases and discharges the Released Parties from any and all known and unknown past, present,
13 and future rights, claims, causes of action, suits, damages, penalties, liabilities, injunctive relief,
14 declaratory relief, and attorneys’ fees, costs, and expenses arising from or related to the claims
15 asserted, or that could have been asserted, under state or federal law, regarding the presence of
16 lead in the Covered Products and the facts alleged in the Notices of Violation or the Complaint,
17 including without limitation any and all claims concerning exposure of any person to lead in the
18 Covered Products as set forth in the Notices of Violation.
19

20
21 **8.3** Compliance with the terms of this Consent Judgment shall constitute compliance by the
22 Released Parties with Proposition 65 with respect to alleged exposures to lead contained in the
23 Covered Products. For purposes of Section 8, the term “Covered Products” shall include in its
24 meaning the Covered Products as defined in Section 1.1.

25 **8.4** Unknown Claims

26
27 With regard to ERC’s personal release only, it is expressly understood by ERC that the
28 releases given by ERC pursuant to this Consent Judgment include the release of all claims,

1 known or unknown which ERC may now or in the future have against AMS or their respective
2 Releasees arising out of or related to the circumstances underlying ERC's Notices of Violation
3 concerning the Covered Products.

4 ERC expressly declares that it has read, understood and knowingly waived any and all rights
5 it may have under the provisions of California Civil Code Section 1542. California Civil Code
6 section 1542 reads as follows:
7

8
9 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
10 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**
11 **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
12 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
13 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**
14

15 ERC, on behalf of itself only, acknowledges and understands the significance and
16 consequences of this specific waiver of California Civil Code section 1542.

17 **8.5** ERC, on the one hand, and AMS, on the other hand, release and waive all claims they
18 may have against each other for any statements or actions made or undertaken by them in
19 connection with the Notices of Violation or this action.

20 **9. CONSTRUCTION OF CONSENT JUDGMENT, SEVERABILITY**

21 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
22 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
23 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
24 construction of this Consent Judgment, the terms and conditions shall not be construed against
25 any Party.
26
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1 **9.2** In the event that any of the provisions of this Consent Judgment are held by a court to
2 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

3
4 **10. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

5 In the event a dispute arises with respect to either party's compliance with the terms of
6 this Consent Judgment entered by the Court, the Parties shall meet either in person or by
7 telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may
8 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

9
10 **11. GOVERNING LAW**

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

13
14 **12. PROVISION OF NOTICE**

15 All notices required by this Consent Judgment shall be sent by first-class, registered, or
16 certified mail, or overnight delivery, to the following:

17 **For Environmental Research Center:**

18 Chris Heptinstall, Executive Director
19 Environmental Research Center
20 3111 Camino del Rio North, Suite 400
San Diego, CA 92108

21 Michael Bruce Freund
22 Law Offices of Michael Freund
23 1919 Addison Street, Suite 105
Berkeley, CA 94704

24 Karen Evans
25 Coordinating Counsel
26 Environmental Research Center
4218 Biona Place
San Diego, CA 92116

1 **For AMS:**

2 Martin Ozinga
3 Phillips Murrah P.C.
4 Corporate Tower, 13th Floor
5 101 N. Robinson Ave.
6 Oklahoma City, OK 73102

7 Dhamendra Lachman, Managing Member
8 AMS Health Sciences, LLC
9 106-23, 78th Street
10 Ozone Park, N.Y. 11417

11 **13. COURT APPROVAL**

12 **13.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be void and
13 have no force or effect.

14 **13.2** ERC shall comply with California Health & Safety Code section 25249.7(f) and with
15 Title 11 of the California Code Regulations, section 3003.

16 **14. EXECUTION AND COUNTERPARTS**

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

20 **15. ENTIRE AGREEMENT, AUTHORIZATION**

21 **15.1** This Consent Judgment contains the sole and entire agreement and understanding of
22 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any Party.
25 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to
26 exist or to bind any of the Parties.

27 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
28

1 the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment,
2 to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to
3 bind that Party to this Consent Judgment. The undersigned have read, understand and agree to
4 all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein,
5 each Party shall bear its own fees and costs

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

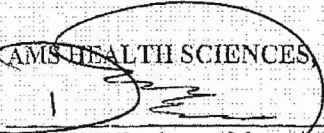
10 16.1 This Consent Judgment has come before the Court upon the request of the Parties.
11 The Parties request the Court to fully review this Consent Judgment and, being fully informed
12 regarding the matters which are the subject of this action, to:

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

17 (2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the
18 Settlement and approve this Consent Judgment

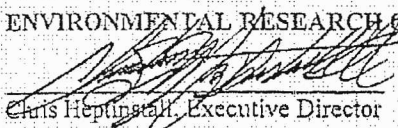
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20 **IT IS SO STIPULATED:**

21
22 **AMS HEALTH SCIENCES, LLC**

23 
24 Dhamendra Lachman, Managing Member

Dated: 06-28-2012

25 **ENVIRONMENTAL RESEARCH CENTER**

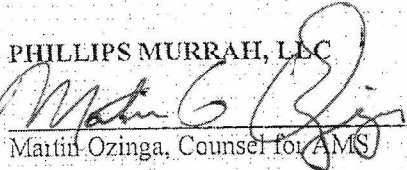
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27 Chris Heptinstall, Executive Director

Dated: 6/27/2012

1 APPROVED AS TO FORM:

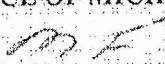
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PHILLIPS MURRAH, LLC


Martin Ozinga, Counsel for AMS

Dated: 6/28/12

LAW OFFICE OF MICHAEL FREUND


Michael Freund, Counsel for ERC

Dated: 6/27/12

JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2012

Judge, Superior Court of the State
of California


1 **APPROVED AS TO FORM:**

2
3 **PHILLIPS MURRAH, LLC**

4
5 _____
6 Martin Ozinga, Counsel for AMS

Dated: _____

7
8 **LAW OFFICE OF MICHAEL FREUND**

9 
10 _____
11 Michael Freund, Counsel for ERC

Dated: 6/27/12

12
13 **JUDGMENT**

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

16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

18
19 Dated: _____, 2012

20 _____
21 Judge, Superior Court of the State
22 of California

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

July 9, 2010

Re: Notice of Violation Against AMS Health Sciences, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), 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. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead contained in the named products manufactured and distributed by AMS Health Sciences, Inc.

This letter constitutes notification that AMS Health Sciences, Inc. located at 4000 N. Lindsay Ave., Oklahoma City, OK 73105 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 which 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.

AMS Health Sciences, Inc. is exposing people to lead from the following products: AMS Health Sciences Saba Weight-Loss Formula Borojo Juice; AMS Health Sciences Uropower; AMS Health Sciences Prime One Concentrate Mixed Fruit; AMS Health Sciences Weight Loss Formula Natural A.C.E.; AMS Health Sciences Gold Plus Antioxidant; and AMS Health Sciences Co-Clenz.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. AMS Health Sciences, 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.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against AMS Health Sciences, Inc. unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'MF', is written over the typed name.

Michael Freund

cc: Chris Heptinstall, ERC
Karen Evans, ERC

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund 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 consulted with 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 the laboratory, 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 8, 2010



Michael Freund
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On July 9, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2009 at Berkeley, California.

MF

Michael Freund

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

District Attorney of Glenn County
PO Box 430
Willows, CA 95988

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

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

District Attorney of Kings County
1400 West Lacey
Hanford, CA 93239

District Attorney of Mono County
PO Box 617
Bridgeport, CA 93517

District Attorney of Contra Costa
County
627 Ferry Street
Martinez, CA 94553

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

District Attorney of Mariposa County
PO Box 730
Mariposa, CA 95338

District Attorney of Alpine County
PO Box 248
Markleeville, CA 96120

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

District Attorney of Monterey County
230 Church Street, Bdg. 2
Salinas, CA 93901

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

District Attorney of Imperial County
939 Main Street
El Centro, CA 92243

District Attorney of Mendocino County
PO Box 1000
Ukiah, CA 95482

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

District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130

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

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

District Attorney of Inyo County
PO Drawer D
Independence, CA 93526

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

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

District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012

District Attorney of Nevada County
110 Union Street
Nevada City, CA 95959-2503

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

District Attorney of Madera County
209 West Yosemite Ave.
Madera, CA 93637

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

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

District Attorney of Kern County
1215 Truxtun Ave.
Bakersfield, CA 93301

District Attorney of Modoc County
204 S. Court Street
Alturas, CA 96101-4020

District Attorney of Placer County
2501 North Lake Blvd.
Tahoe City, CA 96145

District Attorney of San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

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

District Attorney of San Bernardino Cty
316 N. Mountain View Ave.
San Bernardino, CA 92415

District Attorney of Sierra County
Courthouse, PO Box 457
Donieville, CA 95936

District Attorney of Ventura County
800 South Victoria Ave.
Ventura, CA 93009

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

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

District Attorney of Tehama County
PO Box 519
Red Bluff, CA 96080

District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, 92101

District Attorney of Siskiyou County
PO Box 986
Yreka, CA 96097

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Riverside County
4075 Main Street
Riverside, CA 92501

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

District Attorney of Trinity County
PO Box 310
11 Court Street
Weaverville, CA 96093

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

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

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

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

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

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

District Attorney of San Joaquin County
PO Box 990
Stockton, CA 95201

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

District Attorney of Tuolumne County
423 No. Washington Street
Sonora, CA 95370

District attorney of San Luis Obispo
County
1050 Monterey St., Room 450
San Luis Obispo, CA 93408

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1525 Court Street, Third Floor
Redding, CA 96001-1632

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200 East Santa Clara Street
San Jose, CA 95113

District Attorney of San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of Stanislaus County
800 11th Street, Room 200
PO Box 442
Modesto, CA 95353

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

San Diego City Attorney's Office
1200 3rd Ave. # 1620
San Diego, CA 92101

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

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
PO Box 70550
Oakland, CA 94612

Karen A. Evans, General Counsel
Environmental Research Center
Law Office of Karen A. Evans.
4218 Biona Place
San Diego, CA 92116

James Ditanna, President
AMS Health Sciences, Inc.
4000 N. Lindsay Ave.
Oklahoma City, OK 73105



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
AMS Health Sciences, Inc.
4000 N Lindsay Ave
Oklahoma City, OK 73105

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

David J. Ketelsleger
C/O McAfee & Taft A Professional Corporation
(AMS Health Sciences, Inc.'s Registered
Agent for Service of Process)
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102

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

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this Notice that violated Proposition 65 is:

AMS Health Sciences, Inc.

The product that is the subject of this Notice and the chemical in that product identified as exceeding allowable levels is:

AMS Health Sciences Inc. Am-300 90 Caplets

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

This letter is a Notice to AMS Health Sciences, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving AMS Health Sciences, Inc. currently known to ERC from the 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, has been provided to the Noticed Company with a copy of this letter.

AMS Health Sciences, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. AMS Health Sciences, Inc. violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless AMS Health Sciences, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, 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, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall, Executive Director
Environmental Research Center

cc: Karen Evans

Attachments

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by AMS Health Sciences, Inc.

I, Michael Freund, 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



Michael Freund
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 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
AMS Health Sciences, Inc.
4000 N Lindsay Ave
Oklahoma City, OK 73105

David J. Ketelsleger
C/O McAfee & Taft A Professional Corporation
(AMS Health Sciences, Inc.'s Registered
Agent for Service of Process)
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102

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

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Hanford, CA 93230

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Lakeport, CA 95453

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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
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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
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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 6

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, 2nd Floor
Hollister, CA 95023

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

District Attorney, San Diego County
330 West Broadway, 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., 3rd Floor
Redwood City, CA 94063

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

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70 West Hedding Street
San Jose, CA 95110

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701 Ocean Street, Room 200
Santa Cruz, CA 95060

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Redding, CA 96001-1632

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District Attorney, Sonoma County
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District Attorney, Stanislaus County
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District Attorney, Sutter County
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Yuba City, CA 95991

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

District Attorney, Yolo County
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Woodland, CA 95695

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

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City Hall East
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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