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REUBEN YEROUSHALMI (State Bar No. 193981)
Yeroushalmi & Associates
3700 Wilshire Boulevard, Suite 4800
Los Angeles, California 90010
Telephone: (213) 382-3183
Facsimile: (213) 382-3430
Counsel for Plaintiff Consumer Advocacy Group, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

CONSUMER ADVOCACY GROUP, INC.,

Plaintiff,

v.

BAYER CORPORATION; et al.,

Defendant.

CASE NO. BC452177
[PROPOSED] CONSENT JUDGMENT
(Health and Safety Code § 25249 et seq.)

1. INTRODUCTION

1.1 Plaintiff: The Plaintiff is Consumer Advocacy Group, Inc. (“CAG” or “Plaintiff”), a non-profit foundation. CAG is dedicated to, among other causes, protecting the environment, improving human health, and supporting environmentally sound practices.

1.2 Defendant: The Defendant is Bayer Corporation, an Indiana corporation (“Bayer”). Bayer HealthCare LLC (“BHC”) is a wholly owned subsidiary of Bayer Corporation.

1.3 The Parties: Plaintiff and Defendant are sometimes referred to herein in the singular as a “Party” and collectively as the “Parties.”

1 **1.4 The Action:** This action (“Action”) is brought under Proposition 65, the popular
2 name for California’s Safe Drinking Water and Toxic Enforcement Act of 1986, *Cal. Health and*
3 *Safety Code* Section 25249.5 *et seq.* (sometimes referred to as “the Act”). Plaintiff proceeds
4 under Section 25249.7(d) as a “person in the public interest.” Solely for purposes of this Consent
5 Judgment, the Parties stipulate that Plaintiff’s Notice of Intent to Sue, dated July 9, 2010 and
6 attached at **Exhibit A** to this Consent Judgment (“Plaintiff’s Notice”) was served upon Defendant
7 and public prosecutors, including the Attorney General and all district attorneys and city attorneys
8 authorized to prosecute an action to enforce the Act, accompanied by certificates of merit, in
9 compliance with Section 25249.7(d) (1) of the Act. Plaintiff is allowed to proceed pursuant to
10 Section 25249.7(d) (2), because none of those public prosecutors commenced an action pursuant
11 to Plaintiff’s Notices.

12 **1.5 The Complaint:** On December 30, 2010, Plaintiff filed a complaint against
13 Defendant in the Superior Court for the City and County of Los Angeles (“Complaint”) alleging
14 that Defendant violated Proposition 65 by exposing individuals in California to 3,3-
15 dimethylbenzidine (also known as orthotolidine) and 3,3-dimethylbenzidine dihydrochloride
16 (collectively, the “Covered Chemicals”), designated under the Act as “known to the State of
17 California to cause cancer” within the meaning of Section 25249.8(b), without providing
18 Proposition 65 warnings to such individuals, as alleged to be required under Section 25249.6.
19 According the Complaint and Notice, Plaintiff asserts that individuals in California are exposed to
20 the Covered Chemicals during use of Clinistix® Reagent Strips for Urinalysis that are
21 manufactured, packaged, distributed, marketed and/or sold by Defendant for use in California.
22 This product is identified in Plaintiff’s Notices and the Complaint, and such product, as identified
23 therein, is referred to herein as the “Covered Product.” Defendant disputes Plaintiff’s allegations,
24 and further asserts that no exposures to the Covered Chemicals occur during use of the Covered
25 Product, which would require a warning under Proposition 65. Defendant also asserts that Bayer
26 HealthCare LLC (“BHC”), and not Bayer, manufactures and distributes the Covered Product.

27 **1.6 Jurisdiction:** Solely for purposes of this Consent Judgment, the Parties stipulate
28 that the Court has personal jurisdiction over Defendant as to the acts alleged in the Action; that

1 venue is proper in the City and County of Los Angeles; that the claims in the Action present a live
2 controversy as to the application of Proposition 65 to the Covered Product and the Covered
3 Chemicals therein; that this Court has jurisdiction to enter this Consent Judgment as a resolution
4 of all claims alleged in the Action; and that the Court shall retain jurisdiction to implement the
5 Consent Judgment.

6 **1.7 The Standard for Determining Whether Proposition 65 Warnings Are**
7 **Required:** Section 25249.6 of Proposition 65 provides that “[n]o person in the course of
8 business shall knowingly and intentionally expose any individual to a chemical known to the state
9 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
10 individual, except as provided in Section 25429.10.” Section 25249.10(c), under the heading
11 “Exemptions from Warning Requirement,” provides that Section 25249.6 “shall not apply” to an
12 “exposure for which the person responsible can show that the exposure poses no significant risk
13 assuming lifetime exposure at the level in question for substances known to the state to cause
14 cancer, and that the exposure will have no observable effect assuming exposure at one thousand
15 (1000) times the level in question for substances known to the state to cause reproductive toxicity,
16 based on evidence and standards of comparable scientific validity to the evidence and standards
17 which form the scientific basis for the listing of such chemical In any action brought to
18 enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this
19 subdivision shall be on the defendant.” Proposition 65 thus makes it unlawful for a person
20 subject to the Act to expose an individual in California to a Proposition 65-listed chemical
21 without first providing a Proposition 65 warning unless an exemption to this requirement applies.
22 Where the defendant asserts an exemption because the alleged exposure is beneath the level that
23 would require a warning, the burden of proof is on the defendant to establish that the exemption
24 applies.

25 **1.8 Settlement.** Plaintiff’s Notice was served on Defendant on July 13, 2010. The
26 Parties have engaged in informal discovery and settlement negotiations. As a result of this
27 exchange of information, the Parties agree on some aspects of the allegations, but disagree as to
28 several other aspects, and thus disagree as to whether Defendant has violated Proposition 65.

1 Specifically, the Parties agree that the Covered Product contain the Covered Chemicals, although
2 the precise relative amount of each Covered Chemical on each strip is unknown. The Defendant
3 disputes, however, that the manufacture, packaging, distribution, marketing, sale or use of the
4 Covered Products results in the exposure of individuals in California to the Covered Chemicals in
5 amounts, if any, that would require a warning under Proposition 65. Plaintiff disputes
6 Defendant's assertions. Therefore, in order to avoid prolonged litigation and the waste of private
7 and judicial resources that would arise from prosecuting, defending, and adjudicating the issues
8 on which the Plaintiff and Defendant disagree, the Parties have agreed, subject to the approval of
9 the Court, to compromise their disputed claims and defenses, and have entered into a settlement
10 agreement, the terms of which are embodied in this Consent Judgment.

11 **1.9 No Admissions:** Neither the Consent Judgment nor any of its provisions shall be
12 construed as an admission by any Party of any fact, finding, issue of law, or violation of law,
13 including Proposition 65 or any other statute, regulation, or common law requirement related to
14 exposure to the Covered Chemicals or other chemicals listed under Proposition 65 from the
15 Covered Product. By executing this Consent Judgment, and agreeing to provide the relief and
16 remedies specified herein, Defendant does not admit that this Action is not pre-empted by Federal
17 law, or that Defendant has committed any violations of Proposition 65, or any other law or legal
18 duty, and, further, specifically denies that it has committed any such violations. Rather,
19 Defendant maintains that all Covered Products distributed, marketed and/or sold by Defendant
20 and/or others in California have at all times been in compliance with Proposition 65. Nothing in
21 this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense that
22 Plaintiff and Defendant may have in any other or in future legal proceedings unrelated to these
23 proceedings. Defendant reserves all of its rights and defenses with regard to any claim by any
24 person under Proposition 65 or otherwise. Nevertheless, this paragraph shall not diminish or
25 otherwise affect the obligations, responsibilities, waivers, releases, and/or duties provided for
26 under this Consent Judgment.

1 **2. INJUNCTIVE RELIEF**

2 **2.1** The parties acknowledge that BHC, not Bayer, manufactures and distributes the
3 Covered Product. In the spirit of settlement and compromise to promote the public interest, and
4 consistent with BHC's overall business strategy, Bayer and BHC agree that beginning on
5 September 1, 2011, BHC shall cease to distribute, market and/or sell the Covered Product in
6 California.

7 **3. MONETARY PAYMENTS**

8 **3.1** In settlement of Plaintiff's claims against it, Bayer or BHC shall pay a total of
9 \$60,000 to Plaintiff, as described in paragraphs 3.2 and 3.3 below.

10 **3.2 Payment In Lieu of Civil Penalties:** Within forty-five (45) days after the Court's
11 approval of this Consent Judgment, Bayer or BHC shall pay \$12,000 in the form of a check made
12 payable to Consumer Advocacy Group, Inc. CAG will use the payment for such projects and
13 purposes related to environmental protection, worker health and safety, or reduction of human
14 exposure to hazardous substances (including administrative and litigation costs arising from such
15 projects), as CAG may choose. The check shall be delivered to: Reuben Yeroushalmi,
16 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
17 90212.

18 **3.3 Reimbursement of Attorneys Fees and Costs:** Within forty-five (45) days after
19 the Court approves this Consent Judgment, Bayer or BHC shall pay \$48,000 in the form of a
20 check made payable to "YERUSHALMI & ASSOCIATES" as reimbursement for the
21 investigation fees and costs, testing costs, expert witness fees, attorneys fees, and other litigation
22 costs and expenses. The check shall be delivered by overnight delivery to: Reuben Yeroushalmi,
23 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
24 90212.

25 **4. WAIVER AND RELEASE OF ALL CLAIMS**

26 **4.1 Waiver And Release of Claims Against Defendant:** As to those matters raised
27 in this Action, the Complaint, and/or in Plaintiff's Notice (whether as to the Covered Product or
28 as to the Covered Chemicals, and without regard to any potential disputes about the adequacy of

1 such Notice), and any related actions, Releasor, on behalf of the general public, hereby releases
2 Releasees and waives any claims against Releasees for injunctive relief or damages, penalties,
3 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses
4 or any other sum incurred or claimed, for any claims under Proposition 65 or any related actions
5 arising from the sale, distribution or use in California of any Covered Product, including all
6 claims that may arise directly or indirectly from the acts alleged in the Plaintiff's Notice or the
7 Complaint.

8 **4.2 Defendant's Waiver And Release Of Plaintiff:** Defendant hereby releases
9 Releasor from and waive any claims against Releasor for injunctive relief or damages, penalties,
10 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
11 expenses, or any other sum incurred or claimed or which could have been claimed for matters
12 related to the Action.

13 **4.3 Matters Covered By This Consent Judgment/Release of Future Claims:** This
14 Consent Judgment is a full, final, and binding resolution between the Releasor, acting on behalf
15 of itself and on behalf of the general public in the public interest pursuant to *Health and Safety*
16 *Code* Section 25249.7(d), and Releasees, as to all claims arising from Releasees' alleged failure
17 to provide clear, reasonable, and lawful warnings of exposure to the Covered Chemical.
18 Compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
19 known or unknown, concerning compliance by Releasees with existing requirements of
20 Proposition 65 to provide clear and reasonable warning about exposure to the Covered Chemicals
21 in the Covered Product.

22 **4.4. Waiver Of Civil Code Section 1542:** This Consent Judgment is intended as a full
23 settlement and compromise of all claims arising out of or relating to Plaintiff's Notice and/or the
24 Action regarding the Covered Product. No claim is reserved as between the Parties hereto, and
25 Releasor expressly waives any and all rights which it may have under the provisions of
26 Section 1542 of the *Civil Code* of the State of California, which provides:

27 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE

1 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
2 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
3 DEBTOR.”

4 **4.5.** For purposes of this entire paragraph 4, the terms “Releasor” and “Releasees” are
5 defined as follows. The term “Releasor” includes the Plaintiff as defined at paragraph 1.1 above,
6 and also includes its members, subsidiaries, successors, and assigns and its directors, officers,
7 agents, attorneys, representatives, and employees. The term “Releasees” includes the Defendant,
8 as that term is defined in paragraph 1.2 above; its corporate parents, subsidiaries and affiliates,
9 including specifically BHC; each of their past and current downstream customers, distributors and
10 wholesalers of the Covered Product (including specifically CVS Pharmacy, Inc. and CVS
11 Caremark Corporation); and the directors, officers, agents, attorneys, representatives, employees,
12 licensors, licensees, subsidiaries, affiliates, predecessors, successors or assigns of each and any of
13 the entities described above.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may be modified from time to time on any basis by express
16 written agreement of the Parties, with the approval of the Court, or by an order of this Court in
17 accordance with law.

18 **5.1** This paragraph shall not apply to the monetary relief sections of this Consent
19 Judgment.

20 **5.2** The Attorney General shall be served with notice of any proposed modification to
21 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.
22

23 **6. ENFORCEMENT OF CONSENT JUDGMENT**

24 **6.1** The Parties may, by motion or other application before this Court, and upon notice
25 having been given to all Parties in accordance with paragraph 9 below, unless waived, enforce the
26 terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or
27

1 remedies are provided by law. The prevailing party on any such motion or application shall be
2 entitled to recover reasonable attorneys' fees and costs.

3 **6.2** The Parties may enforce the terms and conditions of this Consent Judgment
4 pursuant to paragraph 6.1 only after the complaining party has first given thirty (30) days notice
5 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment
6 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to
7 comply.

8
9 **7. GOVERNING LAW**

10 **7.1** The terms of this Consent Judgment shall be governed by, and construed in
11 accordance with, the laws of the State of California.

12 **7.2** The Parties have participated jointly in the preparation of this Consent Judgment
13 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment
14 was subject to revision and modification by the Parties and has been accepted and approved as to
15 its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing
16 in this Consent Judgment shall not be interpreted against any Party as a result of the manner in
17 which this Consent Judgment was prepared. Each Party to this Consent Judgment agrees that any
18 statute or rule of construction providing that ambiguities are to be resolved against the drafting
19 party should not be employed in the interpretation of this Consent Judgment and, in this regard,
20 the Parties hereby waive the applications of California *Civil Code* Section 1654.

21
22 **8. ENTIRE AGREEMENT**

23 This Consent Judgment constitutes the sole and entire agreement and understanding
24 between the Parties with respect to the subject matter hereof, and any prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
26 and therein. There are no warranties, representations, or other agreements between the Parties,
27 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
28 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties

1 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall
2 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
3 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
4 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing
5 waiver.

6
7 **9. NOTICES**

8 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
9 writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight
10 courier, and/or via facsimile transmission (with presentation of facsimile transmission
11 confirmation) addressed to the Parties as follows:

12
13 **For Plaintiff:** **Yeroushalmi & Associates**
Attn: Reuben Yeroushalmi
14 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212

15
16 **For Defendant:** **McKenna Long & Aldridge LLP**
Attn: Ann Grimaldi, Esq.
17 101 California Street, 41st Floor
San Francisco, California 94111

18
19 The contacts and/or addresses above may be amended by giving notice to all Parties to this
20 Consent Judgment.

21
22 **10. COURT APPROVAL**

23 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
24 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
25 counsel. If the Court approves of this Consent Judgment, then the terms of this Consent
26 Judgment are incorporated into the terms of the Court's Order.

27 Plaintiff will prepare and file a motion to approve this Consent Judgment in full, and shall
28 take all reasonable measures to ensure that it is entered without delay. In the event that the Court

1 declines to approve and order entry of the Consent Judgment without any change whatsoever, this
2 Consent Judgment shall become null and void upon the election of either Party and upon written
3 notice to all of the Parties to the Action pursuant to the notice provisions herein (unless the Parties
4 stipulate otherwise, in writing).

5 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days
6 thereafter, electronically provide or otherwise serve a copy of it and the report required pursuant
7 to 11 *Cal. Code Regs.* § 3004 to/on the California Attorney General's Office.

8
9 **11. AUTHORIZATION**

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

13
14 **12. COUNTERPARTS/FACSIMILE SIGNING**

15 This Consent Judgment may be executed in one or more counterparts, each of which shall
16 be deemed an original, and all of which, when taken together, shall constitute one and the same
17 document. All signatures need not appear on the same page of the document and signatures of
18 the Parties transmitted by facsimile shall be deemed binding.

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22 **IT IS SO STIPULATED:**
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Dated: 2-28-11

CONSUMER ADVOCACY GROUP, INC.



(Signature)

MICHEL SASSOON

(Name)

Executive director

(Title)

Dated: _____

BAYER CORPORATION

(Signature)

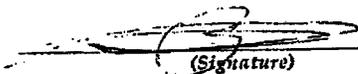
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Dated: 2-28-11

CONSUMER ADVOCACY GROUP, INC.

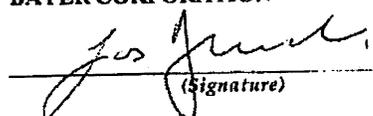

(Signature)

MICHEL SASSOON
(Name)

Executive director
(Title)

Dated: 3-7-11

BAYER CORPORATION


(Signature)

Lars Benecke
(Name)

EVP, Chief Legal Officer & Secretary
(Title)

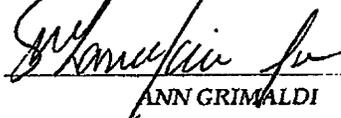
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APPROVED AS TO FORM:

Dated: 2-28-11


REUBEN YERUSHALMI
YERUSHALMI AND ASSOCIATES
COUNSEL FOR PLAINTIFF CONSUMER
ADVOCACY GROUP, INC.

Dated: 3/15/2011


ANN GRIMALDI
MCKENNA LONG & ALDRIDGE
COUNSEL FOR DEFENDANT BAYER
CORPORATION

IT IS SO ORDERED:

In accordance with the stipulation of Plaintiff and Defendant, the Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: _____

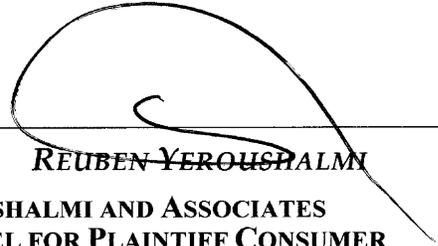
JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

Dated: 2-28-11



~~REUBEN YERUSHALMI~~

**YERUSHALMI AND ASSOCIATES
COUNSEL FOR PLAINTIFF CONSUMER
ADVOCACY GROUP, INC.**

Dated: _____

ANN GRIMALDI

**MCKENNA LONG & ALDRIDGE
COUNSEL FOR DEFENDANT BAYER
CORPORATION**

IT IS SO ORDERED:

In accordance with the stipulation of Plaintiff and Defendant, the Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: _____

JUDGE OF THE SUPERIOR COURT

SF:27438676.1

EXHIBIT A

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER
AND TOXIC ENFORCEMENT ACT OF 1986
(*Cal. Health & Safety Code § 25249.5, et seq.*) ("Proposition 65")

July 9, 2010

Gregory S. Babe, Chief
Executive Officer, or President,
Current President/ CEO
Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205

Larry J. Merlo, Chief
Executive Officer, or
President, Current
President/ CEO
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895

Thomas M. Ryan, Chief
Executive Officer, or President,
Current President/ CEO
CVS Caremark Corporation
One CVS Drive
Woonsocket, RI 02895

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Clinistix® Reagent Strips for Urinalysis BAYER
2844**

Dear Mr. Babe, Mr. Merlo, Mr. Ryan, and to whom else this may concern:

Consumer Advocacy Group, Inc. ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") on Bayer Corporation, CVS Pharmacy, Inc., and CVS Caremark Corporation ("Violators") pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is a registered corporation based in California. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code § 25249.6.*

- **Clinistix® Reagent Strips for Urinalysis BAYER 2844** contains **3,3'-Dimethylbenzidine (ortho-Tolidine)** and **3,3'-Dimethylbenzidine dihydrochloride**, which are known to the State of California to cause cancer. On January 1, 1988, the Governor of California added **3,3'-Dimethylbenzidine (ortho-Tolidine)** to the list of chemicals known to the State to cause cancer, and on April 1, 1992, the Governor added **3,3'-Dimethylbenzidine dihydrochloride** to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice.
- This Notice addresses consumer products exposures. A "[c]onsumer products exposure" is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Clinistix® Reagent Strips for Urinalysis BAYER 2844 (hereinafter "Urinalysis Strips")**. The packaging for the **Urinalysis Strips** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violators, with regard to the **Urinalysis Strips**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to the **Urinalysis Strips**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. The **Urinalysis Strips** is designed for use for urine glucose testing.

These violations occurred each day between January 25, 2007, and January 25, 2010, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Urinalysis Strips** and liberating the **3,3'-Dimethylbenzidine (ortho-Tolidine)** and **3,3'-Dimethylbenzidine dihydrochloride** into the test solution without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Urinalysis Strips** or test solution, as well as hand to mouth contact, hand to mucous membrane, or breathing in particulate matter emanating from the **Urinalysis Strips** during use, as well as through other environmental mediums that carry the **3,3'-Dimethylbenzidine (ortho-Tolidine)** and **3,3'-Dimethylbenzidine dihydrochloride** compounds once contained within the **Urinalysis Strips**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 252549.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is within the United States but beyond the State of California), CAG may file suit. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27, § 25903(d)(1)*. CAG is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: July 09 - 2010

Reuben Yeroushalmi
 Yeroushalmi & Associates
 Attorneys for Consumer Advocacy Group, Inc.

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 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 27 of the California Code of Regulations, Sections 25000 through 27000.

WHAT DOES PROPOSITION 65 REQUIRE?

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

Clear and Reasonable Warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is

exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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

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

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

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000

times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharge 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 list 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 27, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

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

FOR FURTHER INFORMATION...

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

Clinistix® Reagent Strips for Urinalysis BAYER 2844

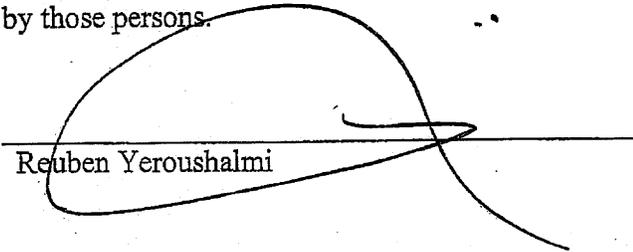
CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) 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.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code 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 09-2010

By: 
Reuben Yeroushalmi

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Los Angeles, CA

Name and address of each party to whom documents were mailed:

Gregory S. Babe, Chief Executive Officer, or President, Current President/ CEO Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205	Larry J. Merlo, Chief Executive Officer, or President, Current President/ CEO CVS Pharmacy, Inc. One CVS Drive Woonsocket, RI 02895	Thomas M. Ryan, Chief Executive Officer, or President, Current President/ CEO CVS Caremark Corporation One CVS Drive Woonsocket, RI 02895
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Name and address of each public prosecutor to whom documents were mailed:

See Distribution List

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

Date of Mailing: 07/13/10

By: _____
Peter T. Sato

Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 th Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 4075 Main St Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 th Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 nd Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110