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OPTIMUM NUTRITION, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF ALAMEDA

17 ENVIRONMENTAL RESEARCH CENTER,  
a California Non-Profit Corporation,

18 Plaintiff,

19 v.

20 OPTIMUM NUTRITION, INC. and DOES  
21 1-100,

22 Defendants.

Case No. **RG11555006**

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: January 10, 2011

1 **1. INTRODUCTION**

2 **1.1** On January 10, 2011, Plaintiff Environmental Research Center (“ERC”), a non-  
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a  
4 Complaint for Injunctive and Declaratory relief and Civil Penalties pursuant to the provisions of  
5 Cal. Health & Safety Code Section 25249.5 *et seq.* (“Proposition 65”), against Optimum Nutrition,  
6 Inc. (“Optimum ” or “ON”) and DOES 1-100. On September 19, 2012, ERC’s First Amended  
7 Complaint (“Amended Complaint”) for Injunctive and Declaratory Relief and Civil Penalties was  
8 filed. In this action, ERC alleges that the products manufactured, distributed or sold by Optimum,  
9 or its subsidiary American Body Building Products, LLC (“ABB”), as more fully described below,  
10 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and that  
11 such products expose consumers at a level requiring a Proposition 65 warning. These products are:  
12 ABB Speed Stack Pumped N.O. Grape Blast; ABB Speed Stack Grape; ON Glucosamine + CSA  
13 Super Strength; ON Opti-Men; ON Thermo Cuts; ON Mega Fat Burners; ON Chitosan Diet  
14 Formula; and ON Tribulus (collectively, the “Products”). ERC and Optimum shall sometimes be  
15 referred to individually as a “Party” or collectively as the “Parties.”

16 **1.2** Based on additional information provided by Optimum to ERC, ERC agrees not  
17 to dispute that ABB Speed Stack Pumped N.O. Grape Blast; ABB Speed Stack Grape; and ON  
18 Tribulus are Proposition 65 compliant. Those products are not subject to the injunctive terms of  
19 Section 3. In addition, Optimum provided ERC recent testing results for ON Glucosamine + CSA  
20 Super Strength which indicated compliance with Proposition 65; however, ERC maintains that its  
21 earlier test results demonstrated non-compliance with Proposition 65 such that the product was  
22 properly put at issue by ERC in the action, which Optimum denies and disputes. The Products  
23 covered by the injunctive terms of Section 3 are the following: ON Opti-Men; ON Thermo Cuts;  
24 ON Mega Fat Burners; ON Chitosan Diet Formula; and ON Glucosamine + CSA Super Strength  
25 (collectively the “Covered Products”).

26 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,  
27 helping safeguard the public from health hazards by bringing about a reduction in the use and  
28 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and

1 employees and encouraging corporate responsibility.

2           **1.4**       Optimum is a business entity that at all times relevant for purposes of this Consent  
3 Judgment employs ten or more persons.

4           **1.5**       The Amended Complaint is based on allegations contained in ERC's Notices of  
5 Violation dated September 4, 2010, October 8, 2010 and March 11, 2011 (collectively, "Notices of  
6 Violation") that were served on the California Attorney General, other public enforcers and  
7 Optimum. True and correct copies of the Notices of Violation are attached hereto as Exhibit A.  
8 More than 60 days have passed since the Notices of Violation were mailed and no designated  
9 governmental entity has filed a complaint against Optimum with regard to the Products or the  
10 alleged violations.

11           **1.6**       ERC's Notices of Violation and the Amended Complaint allege that use of the  
12 Products exposes persons in California to lead without first providing clear and reasonable warnings  
13 in violation of Cal. Health & Safety Code Section 25249.6. Optimum denies all material allegations  
14 contained in the Notices of Violation and Amended Complaint and specifically denies that any of  
15 the Products have required a Proposition 65 warning, or that they have caused harm to any person.  
16 Nothing in the Consent Judgment shall be construed as an admission by Optimum of any fact, issue  
17 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
18 construed as an admission by Optimum of any fact, issue of law or violation of law, at any time, for  
19 any purpose. Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy  
20 or defense that Optimum may have in any other or further legal proceedings.

21           **1.7**       The Parties have entered into this Consent Judgment in order to settle,  
22 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in  
23 this Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by  
24 any of their respective officers, directors, shareholders, employees, agents, parent companies,  
25 subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers, distributors,  
26 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
27 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
28 violation of Proposition 65.

1           **1.8**       Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
3 other or future legal proceeding unrelated to these proceedings.

4           **1.9**       The Effective Date of this Consent Judgment shall be the date on which it is  
5 entered as a Judgment by this Court. As used herein, the term "Compliance Deadline" is the date  
6 that is six (6) months after the Effective Date.

7           **1.10**      Since receiving ERC's Notices of Violation, Optimum has engaged in efforts to  
8 attempt to reformulate its products. Optimum has achieved a reformulation of ON Opti-Men that  
9 Optimum maintains will meet the standards set out in Section 3. In addition, ON discontinued  
10 Chitosan, and installed a water treatment system in a manufacturing facility to reduce the levels of  
11 lead in the municipal water supplied to it.

## 12       **2.       JURISDICTION AND VENUE**

13           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
14 jurisdiction over the allegations of violations contained in the Amended Complaint and personal  
15 jurisdiction over Optimum as to the acts alleged in the Amended Complaint, that venue is proper in  
16 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
17 final resolution of all claims which were or could have been asserted in his action based on the facts  
18 alleged in the Notices of Violation or the Amended Complaint.

## 19       **3.       INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

20           **3.1**       Any Covered Products manufactured on or after the Compliance Deadline that  
21 Optimum thereafter sells in California, markets or distributes for sale into California, or offers for  
22 sale to a third party for retail sale to California must either: (1) qualify as a "Reformulated Covered  
23 Product" under Section 3.3 below, or (2) meet the warning requirements set out in Section 3.2.  
24 Products manufactured before the Compliance Deadline are therefore not subject to the obligations  
25 imposed by Section 3 irrespective of when they are distributed or sold. The final lot numbers of  
26 Covered Products manufactured before the Compliance Deadline will be provided to ERC no more  
27 than twenty (20) days after the Compliance Deadline.

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1           **3.2           Clear and Reasonable Warnings**

2           If Optimum provides a warning pursuant to Section 3.1, the warning shall comply with the  
3 requirements of either Section 3.2.1 or 3.2.2:

4                   **3.2.1** Optimum shall provide the following warning:

5                   **[California Proposition 65] WARNING: This product contains lead, a chemical known**  
6                   **to the State of California to cause [cancer and] birth defects or other reproductive**  
7                   **harm.**

8           The term “cancer and” shall be used in the warning only if the maximum daily dose recommended  
9 on the label contains more than 15 micrograms of lead as determined pursuant to Section 3.4. The  
10 words “California Proposition 65” may be included at Optimum’s option.

11           The warning shall be securely affixed to or printed upon the container, cap, or label of the  
12 Covered Product. The warning shall be displayed with such conspicuousness, as compared with  
13 other words, statements, or design of the label, container or cap, as applicable, to render the warning  
14 likely to be read and understood by an ordinary individual under customary conditions of purchase  
15 or use of the product. The warning appearing on the label, container or cap shall be at least the  
16 same size as the largest of any other health or safety warnings correspondingly appearing on the  
17 label, container or cap, as applicable, of such product, and the word “warning” shall be in all capital  
18 letters and in bold print.

19                   **3.2.2** In the alternative to Section 3.2.1, Optimum shall provide the warning in  
20 accordance with Section 2.2 of the consent judgment attached as Exhibit B hereto, which was  
21 entered in *People v. 21<sup>st</sup> Century Healthcare, Inc., et al.*, Alameda County Superior Court No.  
22 RG08-426937.

23           **3.3           Reformulated Covered Products**

24           A Reformulated Covered Product is one for which the maximum recommended daily  
25 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the  
26 quality control methodology described in Section 3.4.2 and with daily exposure calculated pursuant  
27 to Section 3.4.1, after subtracting the amount of lead pursuant to Section 3.3.1 and Table 1. As used  
28 in this Consent Judgment, “no more than 0.5 micrograms of lead per day” means that the samples  
tested by Optimum under Section 3.4 collectively yield an average daily exposure of no more than

1 0.5 micrograms of lead (with daily exposure calculated pursuant to Section 3.4.1), after excluding  
2 levels of lead pursuant to Section 3.3.1.

3 **3.3.1 Calculation of Lead Levels**

4 For purposes of calculating permissible lead content, Optimum may exclude the amount of  
5 lead in the mineral ingredients listed below in Table 1 in accordance with the Attorney General's  
6 Stipulation Modifying Consent Judgments in *People v. Warner Lambert et al.* (San Francisco  
7 Super. Ct. Case No. 984503). Should Optimum seek to exclude such lead levels in its calculation of  
8 overall lead content for any Covered Product, Optimum shall provide a separate document to ERC  
9 to include a complete list of the ingredients in the Covered Product and the corresponding  
10 percentages of each ingredient within such Covered Product to be held in confidence and kept  
11 confidential by ERC. Optimum shall additionally provide to ERC test results or other data that  
12 independently confirm the percentage of such ingredient(s) being used in each Covered Product(s).  
13 For purposes of this Section 3.3.1 and Section 5.5.1, "other data that independently confirm the  
14 percentage" includes (but is not limited to) a written certification signed by an officer of Optimum.  
15 In the event that a dispute arises with respect to compliance with the terms of this Consent  
16 Judgment as to any contribution from naturally occurring lead levels under this Section 3.3.1, ERC  
17 and Optimum shall employ good faith efforts to seek entry of a protective order that governs access  
18 to and disclosure of the information provided confidentially by Optimum to ERC in any litigation or  
19 proceeding, before any such information is disclosed by ERC in connection with that litigation or  
20 proceeding. Notwithstanding the foregoing, unless ERC obtains Optimum's prior written consent,  
21 ERC shall not be permitted to disclose under any circumstance any information provided by  
22 Optimum under this Section 3.3.1 regarding ingredients other than Table 1 ingredients or to use  
23 such information for any purpose other than to verify percentages of Table 1 ingredients contained  
24 within a Covered Product.

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1                   **TABLE 1**

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<b>INGREDIENT</b>	<b>NATURALLY OCCURRING AMOUNT OF LEAD</b>
Calcium (elemental)	0.8 mcg lead per gram of elemental calcium
Ferrous Fumarate	0.4 mcg lead per gram of ferrous fumarate
Zinc Oxide	8.0 mcg lead per gram of zinc oxide
Magnesium Oxide	0.4 mcg lead per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg lead per gram of magnesium carbonate
Zinc Gluconate	0.8 mcg lead per gram of zinc gluconate
Potassium Chloride	1.0 mcg lead per gram of potassium chloride

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11                   **3.4           Testing and Quality Control Methodology**

12                   **3.4.1**           For purposes of this Consent Judgment, daily lead exposure levels  
13 shall be measured in micrograms, and shall be calculated using the following formula: micrograms  
14 of lead per gram of product, multiplied by grams of product per serving of the product (using the  
15 largest serving size appearing on the product label), multiplied by servings of the product per day  
16 (using the largest number of servings in a recommended dosage appearing on the product label),  
17 which equals micrograms of lead exposure per day, but excluding any naturally occurring levels of  
18 lead as set forth in Section 3.3.1.

19                   **3.4.2**           All testing pursuant to this Consent Judgment shall be performed  
20 using a laboratory method that complies with the performance and quality control factors  
21 appropriate for the method used (including limit of detection, limit of quantification, accuracy, and  
22 precision) and meets the following criteria: Closed-vessel, microwave-assisted digestion employing  
23 high-purity reagents followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg, or any other testing method  
25 subsequently agreed upon in writing by the Parties.

26                   **3.4.3**           All testing pursuant to this Consent Judgment shall be performed by a  
27 laboratory certified by the California Environmental Laboratory Accreditation Program for the  
28 analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the

1 United States Food & Drug Administration for the analysis of heavy metals. Optimum may test the  
2 Covered Products if Optimum is a qualified laboratory as described above. Nothing in this Consent  
3 Judgment shall limit Optimum's ability to conduct, or require that others conduct, additional testing  
4 of the Covered Products, including the raw materials used in their manufacture.

5           **3.4.4**       Before Optimum's first distribution or sale of a Covered Product in  
6 California manufactured after the Compliance Deadline, and at least once a year for three (3) years  
7 thereafter, Optimum shall arrange for the lead testing of five (5) randomly selected samples of each  
8 Covered Product (in the form intended for sale to the end-user) to be distributed or sold to  
9 California. The testing shall continue so long as the Covered Products are sold in California or sold  
10 to a third party for retail sale in California; provided however, if tests conducted pursuant to this  
11 Section 3.4 demonstrate that no warning is required for a Covered Product during each of three (3)  
12 consecutive years, then the testing requirements of this Section 3.4 are no longer required as to that  
13 Covered Product. However, if after the three-year period, Optimum changes ingredient suppliers  
14 for any of the Covered Products and/or reformulates any of the Covered Products, Optimum shall  
15 test that Covered Product at least once after such reformulation or change is made. The testing  
16 requirements of Section 3 do not apply to a Covered Product for which Optimum has provided the  
17 warning specified in Section 3.2 since the Compliance Deadline or during the preceding year.

18           **3.4.5**       Upon written request by ERC, Optimum shall provide to ERC any  
19 test results and documentation of testing undertaken by Optimum pursuant to this Section 3 within  
20 ten working days of receipt by Optimum of ERC's request. Optimum shall retain all test results and  
21 documentation for a period of three (3) years from the date of each test.

#### 22 **4. SETTLEMENT PAYMENT**

23           **4.1**       In full satisfaction of all potential civil penalties, payment in lieu of civil  
24 penalties, attorney's fees and costs (which includes, but is not limited to, filing fees and costs of  
25 attorneys, experts and investigators and testing nutritional health supplements), Optimum shall  
26 make a total payment of \$170,000.00 within ten (10) business days of receiving the Notice of Entry  
27 of Judgment. Said payment shall be for the following:

28 *///*



1                   **4.1.1**       \$22,500 shall be for civil penalties pursuant to Health & Safety Code  
2 Section 25249.7(b)(1). Of this amount, \$16,875 shall be payable to the Office of Environmental  
3 Health Hazard Assessment (“OEHHA”) and \$5,625 shall be payable to Environmental Research  
4 Center. Cal. Health & Safety Code Section 25249.12(c)(1) & (d). Optimum shall send both civil  
5 penalty payments to ERC’s counsel who shall be responsible to forward the civil penalty.

6                   **4.1.2**       \$95,024 shall be payable to ERC in one check. Of this amount,  
7 \$27,500 shall be for reimbursement to Environmental Research Center for reasonable costs  
8 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in  
9 bringing this action, and \$67,524 shall be for the Environmental Research Center, in lieu of further  
10 civil penalties, to cover activities directed to California such as (1) continued enforcement of  
11 Proposition 65, which includes analysis, researching and testing consumer products that may  
12 contain Proposition 65 chemicals which addresses the same or similar type of ingestible products  
13 that are the subject matter of the current action; (2) the continued monitoring of past consent  
14 judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) ERC  
15 awarding a grant in the amount of \$3,375 to Communities for a Better Environment to address  
16 reducing toxic air contaminants in California.

17                   **4.1.3**       \$48,283 payable to Michael Freund as reimbursement of ERC’s  
18 attorney’s fees for Michael Freund and Ryan Hoffman, \$3,713 payable to Karen Evans as  
19 reimbursement ERC’s attorney’s fees, and \$480 payable to Andrew Packard as reimbursement  
20 ERC’s attorney’s fees.

21                   **4.2**       Optimum’s payments shall be mailed or delivered to the Law Office of Michael  
22 Freund. Optimum shall be provided with a completed W-9 for each payee in order to enable  
23 Optimum to process the payment.

24       **5.       MODIFICATION OF CONSENT JUDGMENT**

25                   **5.1**       This Consent Judgment may be modified only upon written agreement and  
26 stipulation of the Parties and upon entry of a modified Consent Judgment by the Court, or as  
27 otherwise provided in this Section 5.

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1           **5.2**       If Optimum seeks to modify this Consent Judgment under Section 5.1, then  
2 Optimum shall provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to  
3 meet and confer regarding the proposed modification in the Notice of Intent, then ERC shall  
4 provide written notice to Optimum within thirty (30) days of receiving the Notice of Intent. If ERC  
5 notifies Optimum in a timely manner of ERC’s intent to meet and confer, then the Parties shall meet  
6 and confer in good faith as required in this Section 5.2. The Parties shall meet in person within  
7 thirty (30) days of ERC’s notification of its intent to meet and confer. Within thirty (30) days of  
8 such meeting, if ERC disputes the proposed modification, ERC shall provide to Optimum a written  
9 factual basis for its position. The Parties shall continue to meet and confer for an additional thirty  
10 (30) days in an effort to resolve any remaining disputes. The Parties may agree in writing to  
11 different deadlines for the meet and confer period.

12           **5.3**       In the event of a modification under Section 5.1 that is initiated or otherwise  
13 requested by Optimum, Optimum shall reimburse ERC its reasonable attorneys’ fees for the time  
14 spent in the meet and confer process and filing and arguing a joint motion or application in support  
15 of a modification of the Consent judgment as well as ERC’s reasonable costs; provided however,  
16 that these fees and costs shall not exceed \$5,000 (five thousand dollars) total without the prior  
17 written consent of Optimum.

18           **5.4**       Where the meet and confer process does not lead to a joint motion or application  
19 in support of a modification of the Consent Judgment, then either Party may seek judicial relief on  
20 its own. In such a situation, the prevailing party may seek to recover costs and reasonable  
21 attorney’s fees. As used in the preceding sentence, the term “prevailing party” means a party who is  
22 successful in obtaining relief more favorable to it than the relief that the other party was amenable  
23 to providing during the parties’ good faith attempt to resolve the dispute that is the subject of the  
24 modification.

25           **5.5**       Should ERC or the California Attorney General reach a settlement of a Proposition  
26 65 claim regarding the same ingredient(s) as contained in a Covered Product that establishes  
27 allowances for naturally occurring lead that results in less stringent lead standards (“Alternative  
28 Lead Standard”) than those specified in Section 3.3, then Optimum shall be entitled to seek to

1 modify the Consent Judgment to adopt such Alternative Lead Standard as to such product, subject  
2 to the meet and confer procedures of Section 5, and as set forth in Section 5.5.1, below.

3           **5.5.1**           If such a settlement referenced in Section 5.5 takes place, Optimum  
4 may elect to exclude such naturally occurring lead in its calculation of overall lead content for any  
5 of the Covered Products. During the meet and confer process, Optimum shall provide to ERC a  
6 complete list of all ingredients for which such a naturally occurring exclusion is sought and the  
7 corresponding percentage of each ingredient within each product, including test results or other data  
8 that independently confirm the percentage of the ingredients being used in each Covered Product.  
9 In addition, during the meet and confer process, Optimum shall provide ERC any other information  
10 that independently supports Optimum's contention that such lead that it seeks to exclude is naturally  
11 occurring. Optimum is entitled to submit to ERC documentation pursuant to this Section 5.5 which  
12 shall be held in confidence by ERC and kept confidential by ERC. Unless ERC obtains Optimum's  
13 prior written consent, ERC shall not be permitted to disclose under any circumstance any  
14 information provided by Optimum under this Section 5.5 regarding ingredients other than those  
15 ingredients for which a naturally occurring exclusion is sought or to use such information for any  
16 purpose other than to verify percentages of ingredients for which a naturally occurring exclusion is  
17 sought which are contained within a Covered Product.

## 18       **6.       RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

19           **6.1**           This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
20 this Consent Judgment pursuant to Section 664.6 of the California Code of Civil Procedure.

21           **6.2**           Only after it complies with Section 15 below, any Party may, by motion or  
22 application for an order to show cause filed with this Court, enforce the terms and conditions  
23 contained in this Consent Judgment.

24           **6.3**           In the event that ERC alleges that any Covered Product fails to qualify as a  
25 Reformulated Covered Product (and for which ERC alleges that no warning has been provided),  
26 then ERC shall inform Optimum in a reasonably prompt manner of its test results, including  
27 information sufficient to permit Optimum to identify the Covered Products at issue. Optimum shall,  
28 within thirty (30) days following such notice, provide ERC with testing information demonstrating

1 Optimum's compliance with the Consent Judgment, if warranted. The Parties shall first attempt to  
2 resolve the matter prior to ERC taking any further legal action pursuant to Section 15.

3 **7. APPLICATION OF CONSENT JUDGMENT**

4 This Consent Judgment may apply to, be binding upon and benefit the Parties, and their  
5 respective officers, directors, shareholders, employees, agents, parent companies (including but not  
6 limited to holding companies related to Optimum), subsidiaries, divisions, affiliates, franchisees,  
7 licensees, customers, distributors, wholesalers, retailers, and all predecessors, successors and  
8 assigns of any of them and ERC on its own behalf and in the public interest as set forth in Section 8.  
9 This Consent Judgment shall have no application to Covered Products which are manufactured,  
10 distributed or sold outside the State of California and which are not used by California consumers.  
11 In addition, this Consent Judgment shall not apply to private label versions, if any, of the Products,  
12 that are labeled and sold under brands or trademarks other than ON and its subsidiaries and  
13 affiliates.

14 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

15 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
16 behalf of itself and in the public interest, and Optimum, of any alleged violation of Proposition 65  
17 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead  
18 from the handling, use or consumption of the Products. ERC, on behalf of itself, its agents, officers,  
19 representatives, attorneys, successors and/or assignees, and on behalf of the general public in the  
20 public interest, hereby waives all rights to institute or participate in (directly or indirectly) any form  
21 of legal action and releases and discharges: (a) Optimum and its past, present and future direct and  
22 indirect parent companies, subsidiaries, affiliates, and divisions; (b) each of their respective  
23 licensors, licensees, franchisors, franchisees, joint venturers, partners, vendors, manufacturers,  
24 packagers, contractors, and finished product and ingredient suppliers; (c) each of their respective  
25 distributors, wholesalers, retailers, users, packagers, customers (but excluding any private label  
26 customers that label and sell versions, if any, of the Products under brands or trademarks other than  
27 ON and its subsidiaries and affiliates), and all other entities in the distribution chain down to the  
28 consumer of any of the Products of the persons and entities described in (a) and (b), above; and (d)

1 each of the respective officers, directors, shareholders, employees, and agents of the persons and  
2 entities described in (a) through (c), above (the persons and entities identified in (a), (b), (c), and  
3 (d), above, including the predecessors, successors and assigns of any of them, are collectively  
4 referred to as the "Released Parties") from any and all claims, actions, causes of action, suits,  
5 demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,  
6 attorneys' fees, and expert fees), costs, and expenses (collectively, "Claims") as to any alleged  
7 violation of Proposition 65 arising from or related to the alleged failure to provide Proposition 65  
8 warnings regarding lead for the Products and Covered Products, except as to any of the Covered  
9 Products manufactured after the Compliance Deadline that are not in compliance with Section 3 of  
10 this Consent Judgment.

11 **8.2** ERC, on behalf of itself, its agents, representatives, attorneys, successors and/or  
12 assignees, and not on behalf of the general public, hereby releases and discharges the Released  
13 Parties from any and all known and unknown Claims for alleged violations of Proposition 65, or for  
14 any other statutory or common law, arising from or relating to alleged exposures to lead and lead  
15 compounds in the Products. It is possible that other Claims not known to the Parties arising out of  
16 the facts alleged in the Notices of Violation or the Amended Complaint and relating to the Products  
17 will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent  
18 Judgment is expressly intended to cover and include all such Claims, including all rights of action  
19 therefor. ERC has full knowledge of the contents of California Civil Code section 1542. ERC, on  
20 behalf of itself only, acknowledges that the Claims released in Sections 8.1 and 8.2 may include  
21 unknown Claims, and nevertheless waives California Civil Code section 1542 as to any such  
22 unknown Claims. California Civil Code section 1542 reads as follows:

23 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
24 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
25 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
26 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

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

1           **8.3**       Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to  
3 lead in the Products.

4           **8.4**       ERC, on one hand, and Optimum, on the other hand, release and waive all claims  
5 they may have against each other for any statements or actions made or undertaken by them in  
6 connection with the Notices of Violation or the Amended Complaint. Provided however, nothing in  
7 this Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent  
8 Judgment.

9           **9.       SEVERABILITY OF UNENFORCEABLE PROVISIONS**

10          In the event that any of the provisions of this Consent Judgment are held by a court to be  
11 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

12          **10.       GOVERNING LAW**

13          The terms and conditions of this Consent Judgment shall be governed by and construed in  
14 accordance with the laws of the state of California.

15          **11.       PROVISION OF NOTICE**

16          All notices required to be given to either Party to this Consent Judgment by the other shall  
17 be in writing and sent to the following agents listed below by (a) first-class, registered, or certified  
18 mail, (b) overnight courier, or (c) personal delivery. Courtesy copies via email may also be sent.

19               **FOR ENVIRONMENTAL RESEARCH CENTER:**

20               Chris Heptinstall, Executive Director  
21               Environmental Research Center  
22               3111 Camino del Rio North, Suite 400  
23               San Diego, CA 92108

24               Michael Bruce Freund  
25               Law Offices of Michael Freund  
26               1919 Addison Street, Suite 105  
27               Berkeley, CA 94704  
28               Telephone: (510) 540-1992  
                  Facsimile: (510) 540-5543

                  Karen Evans  
                  Coordinating Counsel  
                  Environmental Research Center  
                  4218 Biona Place  
                  San Diego, CA 92116  
                  Telephone: (619) 640-8100

1           **FOR OPTIMUM NUTRITION, INC.**

2           General Counsel  
3           Optimum Nutrition, Inc.  
4           975 Meridian Lake Drive  
5           Aurora, IL 60504  
6           Telephone: (630) 236-0097  
7           Email: legal@optimumnutrition.com

8           With a copy to:

9           **ARNOLD & PORTER LLP**  
10          Trenton H. Norris  
11          Sarah Esmaili  
12          One Embarcadero Center, 7th Floor  
13          San Francisco, CA 94111  
14          Telephone: (415) 471-3100  
15          Facsimile: (415) 471-3400

16           **12. COURT APPROVAL**

17           **12.1**       If this Consent Judgment is not approved by the Court, it shall be void and have  
18           no force or effect.

19           **12.2**       If this Consent Judgment is approved by the Court, ERC shall comply with  
20           California Health & Safety Code Section 25249.7(f) and with California Code Regulations, Title  
21           11, Section 3003.

22           **13. EXECUTION AND COUNTERPARTS**

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

26           **14. DRAFTING**

27           The terms of this Consent Judgment have been reviewed by the respective counsel for the  
28           Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss  
29           the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of  
30           this Consent Judgment entered thereon, the terms and provisions shall not be construed against any  
31           Party.

32           ///

33           ///

1     **15.     GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

2             In the event a dispute arises with respect to either Party's compliance with the terms of this  
3     Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and  
4     endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the  
5     absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or  
6     motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's  
7     fees. As used in the preceding sentence, the term "prevailing party" means a party who is  
8     successful in obtaining relief more favorable to it than the relief that the other party was amenable  
9     to providing during the parties' good faith attempt to resolve the dispute that is the subject of such  
10    enforcement action.

11    **16.     ENTIRE AGREEMENT, AUTHORIZATION**

12            **16.1**     This Consent Judgment contains the sole and entire agreement and understanding  
13    of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
14    negotiations, commitments and understandings related hereto. No representations, oral or  
15    otherwise, express or implied, other than those contained herein have been made by any Party. No  
16    other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to  
17    bind any of the Parties.

18            **16.2**     Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19    by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
20    provided herein, each Party shall bear its own fees and costs.

21    **17.     REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
22    **CONSENT JUDGMENT**

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

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



1 (2) Make the findings pursuant to Health & Safety Code Section 25249.7(f)(4), approve  
2 the Settlement and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

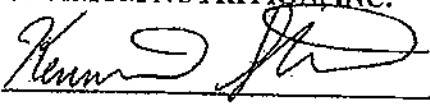
4 Dated: \_\_\_\_\_, 2013

**ENVIRONMENTAL RESEARCH CENTER**

Chris Hepstinstall, Executive Director

8 Dated: March 25, 2013

**OPTIMUM NUTRITION, INC.**



Print Name: Kenneth Strick

12 **APPROVED AS TO FORM:**


14 Dated: \_\_\_\_\_, 2013

**LAW OFFICE OF MICHAEL FREUND**

Michael Freund  
Attorney for Environmental Research Center

18 Dated: March 26, 2013

**ARNOLD & PORTER LLP**



Trenton H. Norris  
Sarah Esmaili  
Attorneys for Defendant Optimum Nutrition, Inc.

23 **ORDER AND JUDGMENT**

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

27 Dated: \_\_\_\_\_, 2013

Judge, Superior Court of the State of California

1 (2) Make the findings pursuant to Health & Safety Code Section 25249.7(f)(4), approve  
2 the Settlement and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

4 Dated: 3/21, 2013

**ENVIRONMENTAL RESEARCH CENTER**

  
Chris Hepstinstall, Executive Director

8 Dated: \_\_\_\_\_, 2013


**OPTIMUM NUTRITION, INC.**

Print Name: \_\_\_\_\_

13 **APPROVED AS TO FORM:**

14 Dated: 3/27/, 2013

**LAW OFFICE OF MICHAEL FREUND**

  
Michael Freund  
Attorney for Environmental Research Center

18 Dated: \_\_\_\_\_, 2013

**ARNOLD & PORTER LLP**

Trenton H. Norris  
Sarah Esmaili  
Attorneys for Defendant Optimum Nutrition, Inc.

23 **ORDER AND JUDGMENT**

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

27 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Judge, Superior Court of the State of California

# EXHIBIT A

LAW OFFICES OF  
**ANDREW L. PACKARD**  
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

September 4, 2010

**VIA CERTIFIED MAIL**  
Current President or CEO  
Optimum Nutrition  
1756 Industrial Rd  
Walterboro, SC - 29488

Current President or CEO  
American Body Building Products, LLC.  
700 N Commerce St  
Aurora, IL - 60504

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

Dear Sirs,

This firm represents the Environmental Research Center (hereafter, "ERC"), a non-profit corporation organized under California's Non-Profit Public Benefit Corporation Law in connection with this notice of violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as "Proposition 65").

ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety and corporate responsibility. ERC has documented the violations of Proposition 65 described herein, and this letter serves to provide notification of these violations to you and to the public enforcement agencies. Pursuant to §25249.7(d) of the statute, ERC intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator(s).

The names of the violator(s) covered by this notice are: Optimum Nutrition, and American Body Building Products, LLC (hereafter, the "Violator(s)"). The Violator(s) manufacture, market, distribute and/or sell in California the following products causing exposures to lead and lead compounds:

ABB Speed Stack Pumped N.O. Grape Blast  
ABB Speed Stack Grape

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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
September 4, 2010  
Page 2

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least September 4, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against the Violator(s) unless the Violator(s) agree in an enforceable written instrument to: (1) recall products already sold; (2) take effective measures to prevent unwarned lead exposures from being caused by products sold in the future; and (3) pay an appropriate civil penalty. In keeping with the public interest goals of the statute and my client's objectives in issuing this notice, ERC is interested 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. ERC's Executive Director is Chris Heptinstall and the organization's mailing address is: 5694 Mission Center Road, #199, San Diego, CA 92108. Tel. (619) 309-4194. However, ERC has retained this firm in connection with this matter; therefore, all communications regarding this Notice of Violation may be directed to my attention at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

**Attachments:**

Certificate of Merit  
Certificate of Service  
List of Service

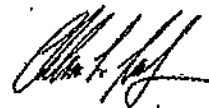
CERTIFICATE OF MERIT

Re: the Environmental Research Center's Notice of Proposition 65 Violations Issued to Optimum Nutrition, and American Body Building Products, LLC.

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 4, 2010



---

Andrew L. Packard

**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 September 4, 2010, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"

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

Current President or CEO  
Optimum Nutrition  
1756 Industrial Rd  
Walterboro, SC - 29488

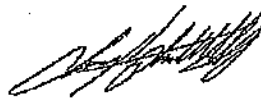
Current President or CEO  
American Body Building Products, LLC.  
700 N Commerce St  
Aurora, IL - 60504

On September 4, 2010, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT (including supporting documentation required by Title 11 CCR §3102) on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

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

On September 4, 2010, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 4, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Mendocino County  
Post Office Box 1080  
Ukiah, CA 95482

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

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

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

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

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

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

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



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

September 4, 2010

Page 7

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

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

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

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95811

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

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

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

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

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

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

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

District Attorney, Sonoma County  
600 Administration Drive, Room 2121  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95353

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

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

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

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

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

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

District Attorney, Yolo County  
301 2nd Street  
Woodland, CA 95695

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

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

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

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

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



**Environmental Research Center**

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

October 8, 2010

**VIA CERTIFIED MAIL**

Current President or CEO  
Optimum Nutrition, Inc.  
1756 Industrial Rd  
Walterboro, SC 29488

**VIA PRIORITY MAIL**

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

Registered Agent for Service: Corporation  
Service Co.  
(Optimum Nutrition)  
1703 Laurel Street  
Columbia, SC 29201

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 names of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Optimum Nutrition, Inc.**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- Optimum Nutrition - Glucosamine + CSA Super Strength - Lead
- Optimum Nutrition - Opti - Men - Lead
- Optimum Nutrition - Thermo Cuts - Lead

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

October 8, 2010

Page 2

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.

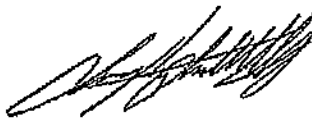
This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to each of the Violators.

Each of the Violators 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. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemicals.

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 each of the Violators 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, Andrew L. Packard, 100 Petaluma Blvd. N., Ste 301, Petaluma, CA 94952, telephone no.: 707-763-7227, e-mail: [info@packardlawoffices.com](mailto:info@packardlawoffices.com)

Sincerely,



Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Andrew Packard  
Karen Evans

Attachments

Certificate of Merit  
Certificate of Service  
OBHHA Summary (to Optimum Nutrition, Inc. and its Registered Agent for Service of Process 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 Optimum Nutrition, Inc.

I, Karen Evans, 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: October 8, 2010

*Karen A. Evans*

\_\_\_\_\_  
Karen A. Evans  
Attorney for Environmental Research Center

**CERTIFICATE OF SERVICE**

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

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

On October 8, 2010, 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  
Optimum Nutrition, Inc.  
1756 Industrial Rd  
Walterboro, SC 29488

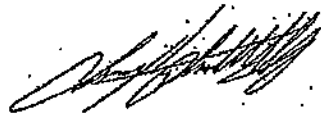
Registered Agent for Service:  
Corporation Service Co.  
(Optimum Nutrition)  
1703 Laurel Street  
Columbia, SC 29201

On October 8, 2010, 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 October 8, 2010, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on October 8, 2010, 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 95120

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  
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Bishop, CA 93514

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

District Attorney, Kings County  
1400 West Lacey Boulevard  
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District Attorney, Lake County  
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Lakeport, CA 95453

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

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District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 95637

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

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

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

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

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

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

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

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

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

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

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

October 8, 2010

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 Butte County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

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

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

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

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

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

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

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

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

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

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

District Attorney, Sierra County  
PO Box 437  
Downsville, CA 95936

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**Environmental Research Center**

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

March 11, 2011

**VIA CERTIFIED MAIL**

Current President or CEO  
Optimum Nutrition, Inc.  
1756 Industrial Rd  
Walterboro, SC 29488

Corporation Service Co.  
(Optimum Nutrition, Inc.'s Registered Agent  
for Service of Process)  
1703 Laurel Street  
Columbia, SC 29201

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

**VIA PRIORITY MAIL**

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

**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:

**Optimum Nutrition, Inc.**

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

**Optimum Nutrition Mega Fat Burners 60 Tablets - Lead**  
**Optimum Nutrition Chitosan Diet Formula 200 capsules - Lead**



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

March 11, 2011

Page 2

**Optimum Nutrition Tribulus 625 Caps 50 Capsules - Lead**

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.

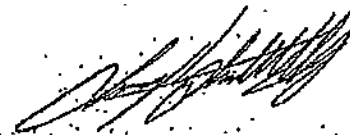
This letter is a Notice to Optimum Nutrition, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Optimum Nutrition, Inc. currently known to ERC from the information now available. 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.

Optimum Nutrition, 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. Optimum Nutrition, 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 Optimum Nutrition, 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: Andrew Packard  
Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Optimum Nutrition, Inc. and its Registered Agent for Service of Process only)

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

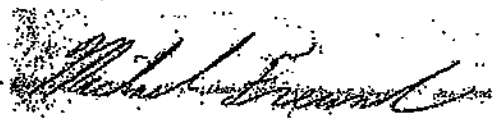
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Optimum Nutrition, 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: March 11, 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 March 11, 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  
Optimum Nutrition, Inc.  
1756 Industrial Rd  
Walterboro, SC 29488

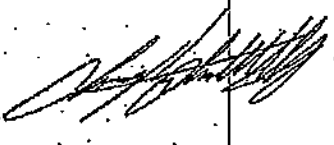
Corporation Service Co.  
(Optimum Nutrition, Inc.'s Registered Agent  
for Service of Process)  
1703 Laurel Street  
Columbia, SC 29201

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

On March 11, 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 March 11, 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  
Markleville, 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

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547 Market Street  
Colusa, CA 95932

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Martinez, CA 94553

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Fresno, CA 93721

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Eureka, CA 95501

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El Centro, CA 92243

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230 W. Line Street  
Bishop, CA 93514

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1215 Truman Avenue  
Bakersfield, CA 93301

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1400 West Lecey Boulevard  
Hanford, CA 93230

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

District Attorney, Lassen County  
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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  
9501 Civic Center, Room 130  
San Rafael, CA 94903

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

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Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Merced County  
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Alturas, CA 96101-4020

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230 Church Street, Bldg 2  
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931 Parkway Mall  
Napa, CA 94559

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110 Union Street  
Nevada City, CA 95959

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401 Civic Center Drive West  
Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 et seq.  
March 11, 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  
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Riverside, CA 92501

District Attorney, Sacramento County  
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Sacramento, CA 95811

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

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

District Attorney, San Diego County  
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San Diego, CA 92101

District Attorney, San Francisco County  
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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 Cir., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

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

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

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

District Attorney, Shasta County  
1825 Court Street, Third Floor  
Redding, CA 96001-1632

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

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

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

District Attorney, Sonoma County  
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Santa Rosa, CA 95403

District Attorney, Stanislaus County  
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Modesto, CA 95353

District Attorney, Sutter County  
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Yuba City, CA 95991

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Marysville, CA 95901

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City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

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

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

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

# EXHIBIT B



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KAMALA D. HARRIS  
Attorney General of California  
LAURA J. ZUCKERMAN  
Deputy Attorney General  
State Bar No. 161896  
TIMOTHY B. SULLIVAN  
Deputy Attorney General  
State Bar No. 197054  
1515 Clay Street, 20th Floor  
Oakland, CA 94612-0550  
Telephone: (510) 622-2174  
Fax: (510) 622-2270  
E-mail: Laura.Zuckerman@doj.ca.gov

**FILED**  
ALAMEDA COUNTY  
JUN 19 2012

CLERK OF THE SUPERIOR COURT  
By \_\_\_\_\_ Deputy

*Attorneys for the People of the State of California*  
(Additional counsel for plaintiff on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
21ST CENTURY HEALTHCARE, INC., et al.  
  
Defendants.

Case No.: RG08426937  
ASSIGNED FOR ALL PURPOSES TO:  
JUDGE WYNNE CARVILL  
DEPARTMENT 21  
  
CONSENT JUDGMENT AS TO  
DEFENDANT PURE ESSENCE  
LABORATORIES, INC.  
  
Trial Date: May 6, 2013  
Action Filed: December 23, 2008

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NANCY B. O'MALLEY  
Alameda County District Attorney  
LAWRENCE C. BLAZER (#95598)  
Assistant District Attorney  
SCOTT D. PATTON (#148468)  
Deputy District Attorney  
Consumer & Environmental Protection Division  
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Oakland, CA 94621  
Tel:(510) 569-9281  
Fax (510) 569-0505

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Monterey County District Attorney  
ANNIE MICHAELS (#136134)  
Deputy District Attorney  
Monterey County District Attorney  
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Fax: (831) 647-7762

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Marin County District Attorney  
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Deputy District Attorney  
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Fax: (415) 499-3719

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County of Shasta District Attorney  
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Deputy District Attorney  
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Redding, CA 96001  
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Fax: (530) 245-6345

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District Attorney, County of Sonoma  
MATTHEW T. CHEEVER (#191783)  
Deputy District Attorney  
2300 County Center Drive, Suite B170  
Santa Rosa, CA 95403  
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Fax: (707) 565-3499

TONY RACKAUCKAS  
Orange County District Attorney  
JOSEPH D'AGOSTINO  
Senior Assistant District Attorney  
TRACY HUGHES (#180494)  
Deputy District Attorney  
Consumer & Environmental Protection Unit  
401 Civic Center Drive West  
Santa Ana, CA 92701-4575  
Tel: (714) 648-3600  
Fax: (714) 648-3636

GARY LIBBERSTEIN  
County of Napa District Attorney  
DARYL ROBERTS (#111981)  
Deputy District Attorney  
931 Parkway Mall  
Napa, CA 94559  
Tel: (707) 253-4211  
Fax: (707) 299-4322

BOB LEE  
Santa Cruz County District Attorney  
KELLY J. WALKER (#95538)  
Assistant District Attorney  
701 Ocean St., Room 200  
Santa Cruz, California 95060  
Tel: (831) 454-2559  
Fax: (831) 454-2227

DON DU BAIN  
County of Solano District Attorney  
CRISELDA B. GONZALEZ (#146493)  
Deputy District Attorney  
County Administration Center  
675 Texas Street, Suite 4500  
Fairfield, CA 94533  
Tel: (707) 784-6865  
Fax: (707) 784-2529



1 **1. INTRODUCTION**

2 **1.1 Introduction**

3 This Consent Judgment is entered pursuant to a stipulation by and between Plaintiff, the  
4 People of the State of California, and Defendant Pure Essence Laboratories, Inc. ("Pure Essence,"  
5 or "Defendant"). Plaintiff and Defendant are collectively referred to as the "parties," and  
6 individually as a "party," in this Consent Judgment.

7 **1.2 Plaintiff**

8 Plaintiff is the People of the State of California. The Safe Drinking Water and Toxic  
9 Enforcement Act of 1986, California Health and Safety Code section 25249.5 et seq.  
10 ("Proposition 65"), at section 25249.7, subdivision (c), provides that actions to enforce  
11 Proposition 65 may be brought by the Attorney General in the name of the People of the State of  
12 California or by any district attorney. California Business and Professions Code sections 17203  
13 and 17204 also provide that actions to prohibit unfair and unlawful business practices may be  
14 brought in the name of the People of the State of California by the Attorney General or by any  
15 district attorney.

16 **1.3 Defendant**

17 The settling defendant is Pure Essence Laboratories, Inc., a Nevada corporation, with its  
18 principal place of business at Las Vegas, Nevada. For purposes of this Consent Judgment,  
19 Defendant acknowledges that it is currently a business with more than 10 employees and that it  
20 currently therefore is a "person in the course of doing business" within the meaning of  
21 Proposition 65. If in the future Defendant employs fewer than 10 employees (according to the  
22 definition of "employee" in California Code of Regulations, title 27, section 25102, subdivision  
23 (h)), then Section 2 shall not apply for the period in which Defendant has fewer than 10  
24 employees, provided that Defendant first notifies the People in writing that it employs fewer than  
25 10 employees and provides proof of the number of employees it employs. Until such time as the  
26 Defendant provides notices and proof as set forth above, it shall continue to comply with the  
27 terms of the Consent Judgment.

28

1           **1.4     General Allegations**

2           The People's Complaint alleges that, through the manufacture, distribution, and/or sale of  
3 vitamin supplements to consumers in California, Defendant violated the provisions of Proposition  
4 65 and engaged in unfair competition, as defined in Business and Professions Code section  
5 17200, by knowingly exposing persons to lead, a chemical known to cause cancer and  
6 reproductive toxicity, without providing a clear and reasonable warning to such individuals.

7           **1.5     Covered Products**

8           The term "Covered Product" means a dietary supplement that Defendant manufactures for  
9 sale in California, Distributes into California, and/or directly sells to a consumer in California and  
10 for which 21 Code of Federal Regulations part 101.36(b)(2) (2011) requires a label that supplies  
11 information indicating that the maximum recommended daily dose of the product:

12           (a)     Contains 250 milligrams or more of calcium or 100 milligrams or more of  
13           magnesium; or

14           (b)     Contains 100 percent or more of the Reference Daily Intake (as set forth in 21  
15           Code of Federal Regulations part 101.9(c)(8)(iv) (2011)) of four or more of the following  
16           vitamins and minerals (each of which is hereinafter referred to as "Specified Vitamins and  
17           Minerals"): calcium, iron, Vitamin A, Vitamin D, Vitamin C, folate (folic acid, folacin),  
18           Vitamin B-6 (pyridoxine), or Vitamin B-12 (cyanocobalamin); or

19           (c)     Contains 50 percent or more of the Reference Daily Intake (as set forth in 21 Code  
20           of Federal Regulations part 101.9(c)(8)(iv) (2011)) of any of the Specified Vitamins and  
21           Minerals and also meets any of the following criteria:

22                   (1)     The product is identified on the label or in advertisements or marketing  
23                   material as a vitamin-mineral, multivitamin, or multi-mineral supplement;

24                   (2)     The product is identified on the label or in advertisements or marketing  
25                   material as a prenatal, lactation; or fertility supplement;

26                   (3)     The product is identified on the label or in advertisements or marketing  
27                   material as a supplement for children or teenagers;

28                   (4)     The product contains 0.4 milligrams or more of folate (folic acid, folacin)

1 per daily dose; or

2 (5) The product is intended to be consumed primarily by, or is marketed  
3 primarily toward, any of the following persons: children under the age of 18;  
4 pregnant women; lactating women; or women or men seeking to enhance fertility,  
5 improve reproductive health, or conceive a child.

6 The presence of substances such as herbs, herbal extracts, or amino acids does not preclude a  
7 product from falling within the definition of Covered Products if it otherwise falls within the  
8 terms set forth. Covered Products do not, however, include the following:

9 (i) Fortified foods, i.e., foods to which additional vitamins and minerals have been  
10 added, including but not limited to cereal or pasta with vitamins and minerals added, or  
11 iodized salt;

12 (ii) Beverages that otherwise would fall within the definition;

13 (iii) Meal replacement products, i.e., products that are intended to provide calories or  
14 nutritional benefits sufficient to replace a meal; or

15 (iv) Protein supplements, i.e., products supplying at least 10 grams of protein per daily  
16 serving.

17 A list of the Covered Products manufactured, distributed, and/or sold by Defendant and  
18 subject to this Consent Judgment is set forth in Exhibit A. Any product manufactured,  
19 distributed, and/or sold by Defendant that is not set forth in Exhibit A is not covered by the  
20 injunctive relief provisions of Section 2, except as specifically provided in Section 1.6 or  
21 Section 9 below.

22 "Distributing into California" (or "Distribute[s][d] into California") means to directly ship  
23 a Covered Product into California for sale in California or to sell a Covered Product to a  
24 distributor that Defendant knows will sell the Covered Product in California.

25 **1.6 Private Label Products**

26 (a) Defendant will submit to the Office of the Attorney General, prior to the Effective  
27 Date, a list of "private label" or contract-manufactured products that meet the definition of  
28 Covered Products, along with the products' brand name and customer and any additional

1 information necessary to identify the products as corresponding to Covered Products listed on  
2 Exhibit A. Defendant deems this identifying information to be confidential, proprietary, or trade  
3 secret. This identifying information, as updated from time to time, is referred to herein as  
4 "Confidential Private Label Information." Defendant shall provide to the Attorney General  
5 updates to the Confidential Private Label Information at least annually by March 1 of each year,  
6 unless there is no change to the list from the previous year, until such time that Defendant no  
7 longer has a duty under this Consent Judgment to test the Covered Products. The update  
8 requirement in the preceding sentence terminates five (5) years from the Effective Date of this  
9 Consent Judgment. Private label or contract-manufactured products that Defendant identifies in  
10 the most recent Confidential Private Label Information submitted to the Attorney General each  
11 year as products listed on Exhibit A shall be Covered Products for the purposes of this Consent  
12 Judgment. Notwithstanding anything else in this Section 1.6(a), Defendant shall not be required  
13 to update its Confidential Private Label Information more frequently than twice per year.

14 (b) All Confidential Private Label Information provided to the Attorney General, whether  
15 before or after the Effective Date, is deemed to be Protected Information under the Protective  
16 Order entered in this case on November 19, 2009 ("Protective Order"). For the purposes of this  
17 Consent Judgment, all elements of the Protective Order shall apply to Confidential Private Label  
18 Information, except that (a) Paragraphs 6, 7, 9, 16, and 17 of the Protective Order do not apply to  
19 Confidential Private Label Information; and (b) documents containing Confidential Private Label  
20 Information need not be consecutively Bates-numbered. Further, to the extent the Court modifies  
21 the Protective Order upon motion by any party to this action in accordance with Paragraph 18 of  
22 the Protective Order, such modification shall not apply to the application of the Protective Order  
23 to this Consent Judgment without the written consent of Defendant.

24 (c) Notwithstanding anything herein or in the Protective Order to the contrary, the People  
25 shall disclose Confidential Private Label Information if requested to do so by Defendant. The  
26 People will return or destroy all Confidential Private Label Information submitted by Defendant  
27 if, after the date that is five (5) years from the Effective Date, Defendant requests in writing that  
28 the People do so.

1           **1.7     Released Products**

2           The term "Released Products" means the Covered Products set forth in Exhibit B.

3           **1.8     Complaint**

4           On December 23, 2008, the People filed a complaint in the Superior Court in and for the  
5 County of Alameda against Defendant and certain other vitamin supplement manufacturers,  
6 distributors, and sellers, alleging violations of Proposition 65 and acts of unfair competition, as  
7 defined in Business and Professions Code section 17200, based on the alleged exposures to lead  
8 contained in the vitamin supplements. On March 27, 2009, the People filed a First Amended  
9 Complaint ("Complaint" or "Action"). Defendant filed an answer to the Complaint on July 23,  
10 2009.

11           **1.9     Complaint Deemed Amended**

12           This Consent Judgment amends the Complaint, effective as of March 27, 2009, such that  
13 all allegations in the Complaint regarding "Vitamin Supplements" (or "vitamin supplements")  
14 sold, manufactured, and/or distributed by Defendant are replaced by allegations regarding the  
15 Covered Products.

16           **1.10    No Admissions or Findings**

17           Defendant denies the material, factual and legal allegations contained in Plaintiff's  
18 Complaint and maintains that all Covered Products that it sold and distributed in California have  
19 been and are in compliance with all laws, including Proposition 65. The parties enter into this  
20 Consent Judgment pursuant to a settlement of certain disputed claims between the parties as  
21 alleged in the Complaint for the purpose of avoiding prolonged and costly litigation between the  
22 parties hereto. By execution of this Consent Judgment, Defendant does not admit any facts or  
23 conclusions of law suggesting or demonstrating any violations of Proposition 65, the Unfair  
24 Competition Act, or any other statutory, common law or equitable requirements relating to the  
25 Covered Products. Nothing in this Consent Judgment shall be construed as an admission by  
26 Defendant of any fact, issue of law, or violation of law. Except as expressly set forth herein,  
27 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense  
28 Defendant may have in this or any other or future legal proceedings. However, this Section shall

1 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under  
2 this Consent Judgment. By execution of this Consent Judgment, the People do not admit any  
3 facts or conclusions of law concerning any violations of Proposition 65, the Unfair Competition  
4 Act, or any other statutory, common law or equitable requirements relating to the Covered  
5 Products. Nothing in this Consent Judgment shall be construed as an admission by the People of  
6 any fact or issue of law, nor shall entering into the Consent Judgment constitute or be construed  
7 as an admission by the People of any fact or issue of law. Except as expressly set forth herein,  
8 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or  
9 argument the People may have in this or any other or future legal proceedings.

10 **1.11 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
12 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper  
13 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions  
14 of this Consent Judgment. This Consent Judgment shall have no application or effect on  
15 Defendant for Covered Products or other products distributed or sold by Defendant to consumers  
16 outside of the state of California.

17 **1.12 Effective Date**

18 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
19 Consent Judgment is entered by the Court.

20 **2. INJUNCTIVE RELIEF/ PERMANENT INJUNCTION**

21 **2.1.** On and after March 1, 2012, Defendant shall be permanently enjoined and  
22 restrained, pursuant to Health & Safety Code §25249.7 and Business and Professions Code  
23 § 17203, from manufacturing for sale in California, Distributing into California, or directly selling  
24 to a consumer in California any Covered Product for which the maximum daily dose  
25 recommended on the label contains more than 0.5 micrograms of lead; after subtracting out the  
26 amount of lead deemed "naturally occurring" for each ingredient listed in Table 2.4 below that is  
27 present in the Covered Product, as described in Section 2.4 below, unless such Covered Product  
28 complies with the warning requirement set forth in Section 2.2 below. This injunction shall not

1 apply to individual units of Covered Product that Defendant puts into the stream of commerce  
2 before March 1, 2012. To put into the stream of commerce means the individual unit of Covered  
3 Product was put into final packaging for consumer sale, Distributed into California, or sold in  
4 California by Defendant. Defendant shall not reduce the recommended dose (by size, number of  
5 tablets, volume, weight, or frequency) of a Covered Product solely to avoid the warning  
6 requirement of Section 2.1. Nothing in this Consent Judgment shall impair or limit the ability of  
7 Defendant to reformulate, relabel, or alter the dose of any Covered Product for other reasons.

8 **2.2. Clear and Reasonable Warnings.** For those Covered Products that are subject to  
9 the warning requirement of Section 2.1, Defendant shall provide one of the following warnings  
10 (“Warning”) as specified below:

11 [California Residents Proposition 65] WARNING [(California Proposition 65)]:  
12 This product contains [lead,] [a] chemical[s] known [to the State of  
13 California] to cause [cancer and] birth defects or other reproductive harm.

14 [California Residents Proposition 65] WARNING [(California Proposition 65)]:  
15 This product contains [lead,] [a] substance[s] known [to the State of  
16 California] to cause [cancer and] birth defects or other reproductive harm.

17 (The text in brackets in the warnings above is optional, except that the term “cancer” must be  
18 included if the maximum daily dose recommended on the label contains more than 15  
19 micrograms of lead after subtracting out the amount of lead deemed “naturally occurring” for  
20 each ingredient listed in Table 2.4 below that is present in the Covered Product.)

21 (a) For sales in retail stores, the Warning may be provided by either of the following  
22 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and  
23 Reasonable Warnings in Retail Stores, below:

24 (1) *Identifying Signs and Designated Symbol in Retail Stores.* In retail stores, the  
25 Warning may be provided through the use of a system that combines both a designated symbol  
26 and an identifying sign that explains the meaning of the designated symbol. The designated  
27 symbol (“Symbol”) shall be the Symbol shown on Exhibit C and shall appear as shown on  
28 Exhibit C, with black “Prop 65” and “!” text, black border, and yellow background, wherever it is  
displayed.

1 (A) *Covered Products Displayed in Retail Stores: Signs.*

2 (i) Form of Sign. A Sign shall be rectangular and at least 36 square  
3 inches in size, with the word "WARNING" centered one-half of an inch from the top of the sign  
4 all in one-half inch capital letters. For the body of the warning message, left and right margins of  
5 at least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. The  
6 Symbol must be at least one inch high. Larger signs shall bear substantially the same proportions  
7 of type size and spacing to sign dimension as a sign that is 36 square inches in size. Unless  
8 modified by agreement of the parties, the sign shall contain the following text (text in brackets is  
9 optional, except as described above):

10  
11 WARNING:  
12 CALIFORNIA PROPOSITION 65  
13 Products with the symbol  
14 [Shown on Exhibit C]  
15 contain [lead,] [a] chemical[s] known to  
16 the State of California to  
17 cause [cancer and] birth defects  
18 or other reproductive harm

19 (ii) Placement of Sign. Signs shall be placed in each California  
20 establishment in which any of Defendant's Covered Products that requires a warning are sold.  
21 Where a retail establishment sells only products that do not require a warning, it is not required to  
22 post the Sign. Signs shall not be covered or obscured, and shall be placed and displayed in a  
23 manner rendering them likely to be read and understood by an ordinary individual prior to  
24 purchase. At least one Sign shall be posted in each aisle or on each shelf or display where the  
25 Covered Products for which the warning is being provided are offered or displayed for sale,  
26 unless the retail establishment has less than 7,500 square feet of retail space and no more than two  
27 cash registers, or the retail establishment's principal purpose is to sell dietary supplements, in  
28 which case the Sign may be posted at each cash register. Additional signs shall be posted as are  
necessary to assure that any potential purchaser of Covered Products would be reasonably likely  
to see a Sign prior to purchase.



1 (iii) Defendant shall provide an exemplar Sign to the central purchasing  
2 office for all distributors and retail establishments with whom Defendant transacts business for  
3 sale of the Covered Products in California that require a warning. Defendant shall send to each  
4 such entity instructions, substantially similar to the sample letter attached as Exhibit D, to post the  
5 Sign (in the case of a retailer) or request that retailers post the Sign (in the case of a distributor) in  
6 accordance with this Consent Judgment, and shall request a response to Defendant with a written  
7 acknowledgment that the Sign will be posted (in the case of a retailer), or that the distributor shall  
8 request retailers to post the Sign, within 30 days of receipt of the instructions. Defendant shall  
9 send a follow-up communication, substantially similar to the sample letter attached as Exhibit E,  
10 to entities who were sent the original instructions and who did not timely send an  
11 acknowledgment. Defendant shall maintain files demonstrating compliance with this provision,  
12 including the communications sent and receipts of any acknowledgments from retailers and  
13 distributors, which shall be provided to the Attorney General on written request. If Defendant  
14 learns that a retailer, distributor, or other person has failed to, or failed to request another entity  
15 to, post or maintain the Sign in accordance with subsection (ii) above, Defendant shall stop  
16 providing Covered Products to such retailer, distributor, or other person until it verifies that  
17 compliance with the terms of subsection (ii) above is achieved.

18 (iv) If Defendant complies with the terms of subsection (iii) above, it  
19 shall not be found to have violated this Consent Judgment where a retail store, distributor, or  
20 other person fails to, or fails to request another entity to, post or maintain the Sign in accordance  
21 with this Consent Judgment.

22 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol shall be  
23 prominently displayed with such conspicuousness, as compared with other words, statements,  
24 designs, or devices used at the point the Covered Product is offered for sale, as to render the  
25 Symbol likely to be seen by an ordinary individual prior to purchase. The Symbol shall be  
26 displayed on or adjacent to the Covered Products in any one or more of the following locations:

27 (i) The Symbol may be permanently affixed to or prominently printed on  
28 any placards, signs, or shelf stickers adjacent to the Covered Product that identify the name or

1 price of the Covered Product displayed, in which case the Symbol shall be at least as tall as the  
2 largest letter or numeral in the name or price of the Covered Product; or

3 (ii) The Symbol may be permanently affixed to or printed on (at the point  
4 of manufacture, prior to shipment to California, or prior to distribution within California) the  
5 outside packaging or container of each unit of the Covered Product, in which case the Symbol  
6 must be large enough that the text "Prop 65" and "!" are in a type size no smaller than 6 point,  
7 and in no case shall the Symbol be less than one-quarter inch (0.25 inch) high; or

8 (iii) The Symbol may be permanently affixed to or printed on a "hang  
9 tag" secured to the container of each unit of the Covered Product, in which case the Symbol shall  
10 be at least one-half inch tall.

11 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not using  
12 the Identifying Signs and Designated Symbol in Retail Stores system described above in Section  
13 2.2(a)(1), the Warning shall be permanently affixed to or printed on (at the point of manufacture,  
14 prior to shipment to California, or prior to distribution within California) the outside packaging or  
15 container of each unit of the Covered Product, or on a "hang tag" secured to the container of each  
16 unit of the Covered Product. The Warning shall be displayed with such conspicuousness, as  
17 compared with other words, statements, designs, or devices on the packaging or labeling, as to  
18 render it likely to be read and understood by an ordinary individual prior to purchase. If the  
19 Warning is displayed on the product container or labeling, the Warning shall be at least the same  
20 size as the largest of any other health or safety warnings on the product container or labeling, and  
21 the word "warning" shall be in all capital letters and in bold print. If printed on the labeling itself,  
22 the Warning shall be contained in the same section of the labeling that states other safety  
23 warnings concerning the use of the product.

24 (b) For Covered Products sold to California consumers through the Internet, the Warning  
25 shall be prominently displayed on each webpage describing the ingredients or attributes of the  
26 Covered Product, or the Warning may be provided at the time the customer enters a California  
27 address for the shipping address. For sales of Covered Products to California consumers through  
28 websites of third parties not affiliated with Defendant, where the Covered Product may be

1 returned by the consumer for a full refund with no extra charge or shipping or handling fee, the  
2 Warning may alternatively be displayed on the outside packaging or container of each unit of the  
3 Covered Product or on an invoice that accompanies the shipment of the Covered Product. In all  
4 circumstances, the Warning shall be displayed with such conspicuousness, as compared with  
5 other words, statements, designs, or devices on the webpages, packaging, container, or invoice, as  
6 to render it likely to be read and understood by an ordinary individual prior to use. The Warning  
7 shall be at least the same size as the largest of any other health or safety warnings on the  
8 webpage, invoice, or product packaging, and the word "warning" shall be in all capital letters and  
9 in bold print. A Warning printed on an invoice must be in a type size at be at least as tall as the  
10 largest letter or numeral in the name or price of the Covered Product printed on the invoice. The  
11 requirements of this paragraph may be modified by written agreement between Defendant and the  
12 People.

13 (c) For Covered Products sold to California consumers through a printed catalog, the  
14 Warning shall be prominently displayed on a catalog page describing the ingredients or attributes  
15 of the Covered Product. Where the Covered Product may be returned by the consumer for a full  
16 refund with no extra charge or shipping or handling fee, the Warning may alternatively be  
17 displayed on the outside packaging or container of each unit of the Covered Product or on an  
18 invoice that accompanies the shipment of the Covered Product. The Warning shall be displayed  
19 with such conspicuousness, as compared with other words, statements, designs, or devices on the  
20 catalog page, invoice, or product packaging, as to render it likely to be read and understood by an  
21 ordinary individual prior to the time of use. The Warning shall be at least the same size as the  
22 largest of any other health or safety warnings on the catalog page, invoice, or product packaging,  
23 and the word "warning" shall be in all capital letters and in bold print. A Warning printed on an  
24 invoice must be in a type size at be at least as tall as the largest letter or numeral in the name or  
25 price of the Covered Product printed on the invoice.

26 (d) For sales and distribution of Covered Products not described in subsections (a), (b),  
27 and (c), above, the Warning shall be provided at the point of sale or distribution prior to purchase  
28 by the consumer. The Warning shall be displayed with such conspicuousness, as compared with

1 other words, statements, designs, or devices, as to render it likely to be read and understood by an  
2 ordinary individual prior to purchase. The Warning shall be at least the same size as the largest of  
3 any other health or safety warnings presented, and the word "warning" shall be in all capital  
4 letters and in bold print.

5 2.3. The warning requirements set forth herein are imposed pursuant to the terms of  
6 this Consent Judgment, and are recognized by the parties as not being the exclusive methods of  
7 providing a warning for the Covered Products under Proposition 65 and its implementing  
8 regulations.

9 2.4. Calculation of Lead Content

10 For the purposes of Section 2.1 of this Consent Judgment, the amount of lead deemed  
11 "naturally occurring" in a Covered Product is the sum of the amounts of "naturally occurring"  
12 lead supplied by the quantity of each ingredient listed in Table 2.4 that is present in the maximum  
13 daily dose recommended on the label of Covered Product. For each ingredient, the amount of  
14 "naturally occurring" lead is listed in Table 2.4 in micrograms ("mcg") of "naturally occurring"  
15 lead per gram of the ingredient contained in the maximum daily dose recommended on the label  
16 of Covered Product. If the amount of elemental calcium contained in the maximum daily dose  
17 recommended on the label of a Covered Product exceeds 1500 milligrams, then the amount of  
18 "naturally occurring" lead supplied by each ingredient listed in Table 2.4 is limited to that amount  
19 of lead supplied by the quantity of the ingredient that would be contained in that fraction of the  
20 maximum daily dose of the Covered Product that would supply only 1500 milligrams of  
21 elemental calcium.

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TABLE 2.4

<u>INGREDIENT</u>	<u>NATURALLY OCCURRING AMOUNT OF LEAD</u>
Calcium (elemental)	0.8 mcg Pb per gram of elemental Calcium
Ferrous Fumarate	0.4 mcg Pb per gram of Ferrous Fumarate
Zinc Oxide	8.0 mcg Pb per gram of Zinc Oxide
Magnesium Oxide	0.4 mcg Pb per gram of Magnesium Oxide
Magnesium Carbonate	0.332 mcg Pb per gram of Magnesium Carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of Magnesium Hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of Zinc Gluconate
Potassium Chloride	1.1 mcg Pb per gram of Potassium Chloride

2.5. Modification of "Naturally Occurring" Allowance

(a) In the event that the Attorney General determines that the naturally occurring levels set forth in Table 2.4 of Section 2.4 above are higher than the "lowest level currently feasible," as stated in California Code of Regulations, title 27, section 25501, the Attorney General shall have the right to seek a modification of the Consent Judgment to reflect the alleged "lowest level currently feasible" of naturally occurring lead in the specified ingredients. Prior to seeking such modification, the Attorney General shall provide written notice to Defendant that the Attorney General intends to seek the modification. The parties shall have ninety (90) days in which to confer with the Attorney General concerning the modification. If Defendant and the Attorney General are unable to agree on a modification to the Consent Judgment, the Attorney General may file a motion with the Court seeking a modification of the Consent Judgment. In any motion by the Attorney General seeking such a modification, the burden of producing evidence shall be initially upon the Attorney General to demonstrate a prima facie case that the modification sought by the Attorney General is the "lowest level currently feasible." A Defendant who does not agree to such modification retains the ultimate burden of proving that the modification sought by the Attorney General is lower than the "lowest level currently feasible." The parties hereby agree that the Consent Judgment should be modified to reflect any agreement

1 of the parties or any determination by the Court concerning what is the "lowest level currently  
2 feasible" for lead in the specified ingredients.

3 (b) In the event that Defendant determines that the naturally occurring levels set forth in  
4 Table 2.4 of Section 2.4 above are lower than the "lowest level currently feasible," as stated in  
5 California Code of Regulations, title 27, section 25501, Defendant shall have the right to seek  
6 modification of the Consent Judgment to reflect the alleged "lowest level currently feasible" of  
7 naturally occurring lead in the specified ingredients. Prior to seeking such modification,  
8 Defendant shall provide written notice to the Attorney General that it intends to seek the  
9 modification. The parties shall have ninety (90) days in which to confer concerning the  
10 modification. If the parties are unable to agree on a modification to the Consent Judgment,  
11 Defendant may file a motion with the Court seeking a modification of the Consent Judgment. In  
12 any motion by Defendant seeking such modification, the burden of producing evidence and of  
13 proof shall be on Defendant to prove that the modification sought by the Defendant is the "lowest  
14 level currently feasible." The parties hereby agree that the Consent Judgment should be modified  
15 to reflect any agreement of the parties or any determination by the Court concerning what is the  
16 "lowest level currently feasible" for lead in the specified ingredients.

17 (c) The term "feasible" as used in Section 2.5 includes, but is not limited to, a  
18 consideration of the following factors: availability and reliability of a supply of low-lead  
19 ingredients that meet the requirements set forth in Section 2.4; cost of low-lead ingredients and  
20 resulting increase in manufacturers' prices resulting from the use of the low-lead ingredients;  
21 performance characteristics of low-lead ingredients and of the resulting Covered Products,  
22 including, but not limited to, formulation, performance, safety, efficacy, and stability. Nothing in  
23 this Consent Judgment shall be interpreted to require Defendant to use any ingredient in a  
24 Covered Product that would render the Covered Product unlawful under state or federal law as  
25 measured by existing and/or future applicable California and federal food and drug laws and  
26 regulations.

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1           2.6.   Testing

2           (a) Once a year, on or before the anniversary of the entry of the Consent Judgment (or, in  
3 the case of a New Product deemed to be a Covered Product pursuant to Section 9, prior to the  
4 time it is Distributed into California or directly sold to a consumer in California), Defendant shall  
5 test for lead content, or require its supplier to test for lead content, randomly-selected samples of  
6 each Covered Product (in the form intended for sale to the end-user) for which a batch or lot was  
7 manufactured in the preceding twelve months. This testing requirement does not apply to a  
8 Covered Product for which Defendant has provided the warning specified in Section 2.2 since the  
9 Effective Date or during the preceding twelve months, whichever is the more recent period, nor  
10 does it apply to a Covered Product during any time period in which Defendant has provided the  
11 warning specified in Section 2.2. The method of selecting samples for testing must comply with  
12 the regulations of the Food and Drug Administration as set forth in 21 Code of Federal  
13 Regulations part 111, subpart B, including part 111.80(c). (2011). This testing requirement will  
14 no longer apply to Covered Products identified on Exhibit A or to New Products if those products  
15 are reformulated so that they no longer meet the definition of Covered Products contained in  
16 Section 1.5.

17           (b) Testing for lead shall be performed using a laboratory method that complies with the  
18 performance and quality control factors appropriate for the method used (including limit of  
19 detection, limit of quantification, accuracy, and precision) and that meets either of the following  
20 sets of criteria:

21                 (1) Closed-vessel, microwave-assisted acid digestion employing high-purity  
22 reagents, followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a  
23 limit of quantification of  $\leq 0.060$  mg/kg, or any other testing method previously agreed upon in  
24 writing by the parties; or

25                 (2) Heat-assisted acid digestion employing high-purity reagents, followed by  
26 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of  
27  $\leq 0.060$  mg/kg.

1 Defendant acknowledges that the method specified in (b)(2) may be a less accurate  
2 method of determining the lead content of its products than (b)(1) and may tend to underreport  
3 the actual amount of lead present in the product. If Defendant elects to use method (b)(2) for  
4 testing any Covered Product, and the results of the test report an amount of lead that would lead  
5 to an exposure of more than 0.35 micrograms of lead per day, based on the maximum daily dose  
6 recommended on the label of the Covered Product, then prior to distributing into California or  
7 directly selling in California that Covered Product Defendant shall re-test the product using the  
8 method outlined in (b)(1) and shall disregard the results of the first test.

9 (c) Defendant shall provide any test results and documentation within fifteen (15)  
10 working days of any written request from the People, and shall retain all test results and  
11 documentation for a period of four (4) years from the date of the test. All test results for lead  
12 content, once provided to the Attorney General, shall be public documents, but Defendant may  
13 redact any test reports to remove results of tests for chemicals other than lead. Absent good  
14 cause, the People shall not request test data from Defendant pursuant to this Section 2.6 more  
15 frequently than twice a year.

16 (d) If tests conducted pursuant to subsection (b) demonstrate that no warning is required  
17 for a Covered Product during each of four (4) consecutive years, then the testing requirements of  
18 this Section 2.6 are suspended as to that Covered Product until there is a material change in the  
19 product's formula, manufacturing process, ingredients, or recommended dosage, at which time  
20 the testing requirements applicable to New Products in subsection (a) shall apply; however, such  
21 suspension of the testing requirements does not suspend or waive any other requirement of this  
22 Consent Judgment, including any obligation to provide a warning pursuant to Section 2.1.

23 (e) Nothing in this Consent Judgment shall limit Defendant's ability to conduct, or  
24 require that others conduct, additional testing of the Covered Products, including the raw  
25 materials used in their manufacture.

26 (f) This Consent Judgment, including the testing and sampling methodology set forth in  
27 this Section, is the product of negotiation and compromise, and is accepted by the parties for  
28 purposes of settling, compromising, and resolving issues disputed in this action, including future



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

6 2.7. Nothing in the Consent Judgment shall preclude Defendant from seeking to modify  
7 this Consent Judgment pursuant to Section 8.1 to establish that any ingredient or ingredients not  
8 set forth in Table 2.4 of Section 2.4 of this Consent Judgment contain(s) lead that is naturally  
9 occurring at the lowest level currently feasible as stated in California Code of Regulations, title  
10 27, section 25501.

11 **3. SETTLEMENT PAYMENTS**

12 **3.1 Settlement Amount and Allocation**

13 The total settlement amount to be paid by Defendant shall be \$50,000.00, allocated more  
14 specifically as follows:

15 (1) Within 30 days of the Effective Date, Defendant shall pay a civil penalty of seventeen  
16 thousand one hundred dollars (\$17,100.00) pursuant to California Health & Safety Code section  
17 25249.7, subdivision (b). This payment shall be divided in accordance with Health & Safety  
18 Code section 25249.12, subdivisions (c) and (d), with \$12,825.00 (75 percent of the penalty) to be  
19 sent to the Office of Environmental Health Hazard Assessment ("OEHHA" to be deposited in the  
20 Safe Drinking Water and Toxic Enforcement Fund, and \$4,275.00 (25 percent of the penalty) to  
21 be paid to the Office of the Attorney General,

22 (a) The 75-percent share of the penalty to be deposited in the Safe Drinking Water  
23 and Toxic Enforcement Fund shall be paid by check payable to OEHHA, with the check to bear  
24 the notation "Proposition 65 - AG Matter ID OK2008900614."

25 (b) The 25-percent share of the penalty to be paid to the Office of the Attorney  
26 General shall be paid by check payable to the "California Department of Justice - Litigation  
27 Deposit Fund." The check shall bear on its face "Proposition 65 Recoveries Fund" and the  
28 Attorney General's internal reference number for this matter (OK2008900614). The money paid

1 to the Attorney General's Office pursuant to this paragraph shall be administered by the  
2 California Department of Justice and shall be used by the Environment Section of the Public  
3 Rights Division of the Attorney General's Office, until all funds are exhausted, for any of the  
4 following purposes: (1) implementation of the Attorney General's authority to protect the  
5 environment and natural resources of the State pursuant to Government Code section 12600 et  
6 seq. and as Chief Law Officer of the State of California pursuant to Article V, section 13 of the  
7 California Constitution; (2) enforcement of laws related to environmental protection, including,  
8 but not limited to, Chapters 6.5 and 6.95, Division 20, of the California Health & Safety Code; (3)  
9 enforcement of the Unfair Competition Law, Business & Professions Code section 17200 et seq.,  
10 as it relates to protection of the environment and natural resources of the State of California; and  
11 (4) other environmental actions that benefit the State and its citizens as determined by the  
12 Attorney General. Such funding may be used for the costs of the Attorney General's  
13 investigation, filing fees and other court costs, payment to expert witnesses and technical  
14 consultants, purchase of equipment, laboratory analyses, personnel costs, travel costs, and other  
15 costs necessary to pursue environmental actions investigated or initiated by the Attorney General  
16 for the benefit of the State of California and its citizens. The payment, and any interest derived  
17 therefrom, shall solely and exclusively augment the budget of the Attorney General's Office as it  
18 pertains to the Environment Section of the Public Rights Division and in no manner shall  
19 supplant or cause any reduction of any portion of the Attorney General's budget.

20 (2) Within 30 days of the Effective Date, Defendant shall pay a civil penalty of eight  
21 thousand five hundred fifty dollars (\$8,550.00) pursuant to Business & Professions Code section  
22 17206 to the Marin County District Attorney's Office, which office shall distribute this amount  
23 pursuant to a written agreement of the District Attorney offices in this action.

24 (3) Within 30 days of the Effective Date, Defendant shall pay investigative costs in the  
25 amount of twelve thousand one hundred seventy-five dollars (\$12,175.00) pursuant to Business  
26 and Professions Code section 17203 to the Marin County District Attorney's Office, which office  
27 shall distribute this amount pursuant to a written agreement of the District Attorney offices in this  
28

1 action; with the portion provided to the Napa County District Attorney's Office to be deposited  
2 into the Napa District Attorney's Environmental Protection Trust Fund.

3 (4) Within 30 days of the Effective Date, Defendant shall pay twelve thousand one hundred  
4 seventy-five dollars (\$12,175.00) to the California Department of Justice as reimbursement for  
5 attorneys fees and costs to be used by the Attorney General for the enforcement of Proposition 65  
6 ("Enforcement Fund Payment"). This payment shall be made by check payable to the "California  
7 Department of Justice." The check shall bear on its face "Proposition 65 Enforcement Fund" and  
8 the Attorney General's internal reference number for this matter (OK2008900614). Funds paid  
9 pursuant to this paragraph shall be placed in an interest-bearing Special Deposit Fund established  
10 by the Attorney General. These funds, including any interest, shall be used by the Attorney  
11 General, until all funds are exhausted, for the costs and expenses associated with the enforcement  
12 and implementation of Proposition 65, including investigations, enforcement actions, and other  
13 litigation or activities as determined by the Attorney General to be reasonably necessary to carry  
14 out his duties and authority under Proposition 65. Such funding may be used for the costs of the  
15 Attorney General's investigation, filing fees and other court costs, payment to expert witnesses  
16 and technical consultants, purchase of equipment; travel, purchase of written materials, laboratory  
17 testing, sample collection, or any other cost associated with the Attorney General's duties or  
18 authority under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this  
19 paragraph, and any interest derived therefrom, shall solely and exclusively augment the budget of  
20 the Attorney General's Office and in no manner shall supplant or cause any reduction of any  
21 portion of the Attorney General's budget.

22 3.2 Delivery

23 Defendant shall pay the entire settlement amount within thirty (30) days following the  
24 Effective Date. The payments required by this Consent Judgment shall be made as follows:

25 (a) The payment required by Section 3.1(1)(a) shall be sent directly to:

26 Senior Accounting Officer – MS 19-B  
27 Office of Environmental Health Hazard Assessment  
28 P.O. Box 4010  
Sacramento, CA 95812-0410

1 (b) All payments required by Sections 3.1(1)(b) and 3.1(4) shall be made through the  
2 delivery of separate checks by certified or express mail to the attention of:

3 Laura J. Zuckerman  
4 Timothy E. Sullivan  
5 Deputy Attorneys General  
6 California Department of Justice  
7 1515 Clay Street, 20th Floor  
8 Oakland, CA 94612

9 A copy of the checks and cover letter shall be sent to

10 Robert Thomas  
11 Legal Analyst  
12 California Department of Justice  
13 1515 Clay St., 20th Floor  
14 P.O. Box 70550  
15 Oakland, California 94612-0550

16 (c) A single check in the amount of twenty thousand seven hundred twenty-five dollars  
17 (\$20,725.00), comprising the amounts described above in Sections 3.1(2) and 3.1(3), shall be  
18 made payable to "Marin District Attorney Consumer Trust Account" and sent by certified or  
19 express mail to the attention of:

20 Andres Perez  
21 Deputy District Attorney  
22 Marin County District Attorney's Office  
23 3501 Civic Center Dr.  
24 San Rafael CA 94903

#### 25 4. ENFORCEMENT OF CONSENT JUDGMENT

26 (a) In the event that the People believe that Defendant is in violation of any provision of  
27 this Consent Judgment, the People shall provide written notice of such alleged violation to  
28 Defendant. The Parties must meet and confer regarding the alleged violation within twenty (20)  
business days of Defendant's receipt of the notice. After sending such a notice of alleged  
violation, and notwithstanding the meet-and-confer obligation in the preceding sentence, the  
People may, by motion or order to show cause before the Superior Court of Alameda County,  
enforce the terms and conditions contained in this Consent Judgment. In any action brought by  
the People to enforce this Consent Judgment, the People may seek whatever fines, costs,

1 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
2 Where said failure to comply constitutes a violation of Proposition 65, unfair competition, as  
3 defined by Business and Professions Code section 17200, or a violation of other laws, the People  
4 are not limited to enforcement of this Consent Judgment, but may seek in another action whatever  
5 fines, costs, penalties, or remedies as are provided by law for failure to comply with Proposition  
6 65 or other laws or for engaging in unfair competition. The rights of Defendant to defend itself  
7 and its actions in law or equity shall not be abrogated or reduced in any fashion by the terms of  
8 this Section 4.

9 (b) If, after the date this Consent Judgment is executed by Defendant, Defendant receives  
10 or becomes aware of a notice of alleged violation pursuant to California Health and Safety Code  
11 section 25249.7, subdivision (d), alleging that a Covered Product has caused an exposure to lead  
12 in violation of section 25249.6, and the Defendant provides evidence to the People, within thirty  
13 (30) days of receipt or knowledge of such notice of alleged violation, that either (1) the Covered  
14 Product would not have required a warning under the standards set out in Section 2.1 had they  
15 then been applicable, or (2) Defendant has discontinued, reformulated, or relabeled the Covered  
16 Product such that a warning is no longer required under Section 2.1, then Defendant and the  
17 People shall meet and confer respecting such matter within thirty (30) days of the People's receipt  
18 of such evidence. As a result of those discussions between the People and Defendant, the People  
19 may seek to modify this Consent Judgment to add the Covered Product that is the subject of the  
20 notice of alleged violation to the list of Released Products if the Defendant and the People agree  
21 on such modification. Otherwise, the People may take such other action as allowed by law, or the  
22 People may elect to take no action respecting such Covered Product.

#### 23 5. COVERED CLAIMS

24 This Consent Judgment is a full, final, and binding resolution between the People and  
25 Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, sister companies,  
26 affiliates, and cooperative members (collectively, the "Covered Entities"), and with the licensors,  
27 licensees, retailers, distributors, wholesalers, upstream suppliers, contract manufacturers, agents,  
28 representatives of the Covered Entities, and the officers, directors, employees, attorneys, agents,

1 representatives, predecessors, successors, and assigns of any of the above, of any violation of  
2 Proposition 65 or its implementing regulations, any acts of unfair competition, as defined by  
3 Business and Professions Code sections 17200, or any violation of any other statutory or common  
4 law that have been or could have been asserted in the Action for failure to provide clear and  
5 reasonable warnings required by Proposition 65 of exposure to lead from use of the Released  
6 Products, or any other claim based on the facts or conduct alleged in the Complaint as to such  
7 Released Products. Defendant waives any claims against the People based on the filing or  
8 prosecution of the Action. Compliance with all of the requirements of Section 2 constitutes  
9 compliance with Proposition 65 and Business and Professions Code sections 17200 et seq. with  
10 respect to any obligation of Defendant to provide a warning as to the lead content of any Covered  
11 Product.

12 **6. COURT APPROVAL**

13 The People shall submit this Consent Judgment to the Court for its approval and entry in  
14 the Action.

15 **7. RETENTION OF JURISDICTION**

16 This Court shall retain jurisdiction of this matter to implement the Consent Judgment,  
17 including modifications to add products to the list of Released Products, to enforce the Consent  
18 Judgment and enable the collection of additional civil penalties and costs, if appropriate, and to  
19 enable the People to apply to the Court upon noticed motion for additional civil penalties in the  
20 event there are any material misrepresentations in Defendant's Second Amended Response to  
21 Certain of Plaintiff's First Set of Special Interrogatories to Defendant Pure Essence Laboratories,  
22 Inc. (served March 12, 2012), submitted to the People and on which the People relied in  
23 executing this Consent Judgment, which motion must be filed within the sooner of three (3) years  
24 after entry of judgment or one (1) year after the People discover the material misrepresentation.

25 **8. MODIFICATION**

26 **8.1** This Consent Judgment may be modified from time to time by express written  
27 agreement of the parties, with the approval of the Court, or by an order of this Court. Before  
28 filing an application with the Court for a modification to this Consent Judgment, the Parties shall

1 meet and confer with each other to determine whether each will consent to the proposed  
2 modification. If a proposed modification is agreed upon, then the Parties will present the  
3 modification to the Court by means of a stipulated modification to the Consent Judgment.  
4 Grounds for considering modification shall include any that are permitted by law, including but  
5 not limited to the grounds set forth below.

6       **8.2** If the Attorney General subsequently agrees in a settlement or judicially-entered  
7 injunction or consent judgment that vitamin supplements made with the same ingredients as, and  
8 having a composition similar to, any of Defendant's Covered Products do not require a warning  
9 under Proposition 65, or that a modified warning for such vitamin supplements is appropriate that  
10 differs from that imposed in this Consent Judgment, or establishes allowances for naturally-  
11 occurring lead in ingredients used in any of Defendant's Covered Products; or a court of  
12 competent jurisdiction renders a final judgment in a case brought by the Attorney General that  
13 eliminates the warning requirement for vitamin supplements made with the same ingredients as,  
14 and having a composition similar to, any of Defendant's Covered Products, or that modifies the  
15 warning requirement for such vitamin supplements, either by establishing allowances for  
16 naturally-occurring lead or otherwise, then Defendant shall be entitled to seek to modify the terms  
17 of this Consent Judgment to make it consistent with the Attorney General agreement or Court  
18 judgment described herein. The parties intend that this Consent Judgment may be modified to  
19 allow Defendant to take advantage of allowances for naturally-occurring lead in ingredients that  
20 are used in any of Defendant's Covered Products that may be established in such Attorney  
21 General agreement or Court judgment described herein.

## 22       **9. NEW PRODUCTS**

23       A "New Product" means either of the following: (1) a product that is intended to  
24 substantially replace or be substantially duplicative of a Covered Product identified on Exhibit A  
25 hereto and that meets the definition of a Covered Product; or (2) a new product formulation  
26 which, had it existed on the date Defendant executed this Consent Judgment, would have met the  
27 definition of a Covered Product. Each New Product is deemed also to be a Covered Product.  
28 Defendant shall not manufacture for sale in California, Distribute into California, or directly sell

1 to a consumer in California any New Product unless the New Product adheres to the requirements  
2 of this Consent Judgment with respect to Covered Products. On or prior to March 1 of each year,  
3 Defendant shall send written notice to the Office of the Attorney General listing any New  
4 Products it manufactured for sale in California, Distributed into California, or directly sold in  
5 California during the previous calendar year for which such notice has not previously been  
6 provided. The notice requirement in the preceding sentence terminates five (5) years from the  
7 Effective Date of this Consent Judgment. Defendant shall not be deemed in violation of this  
8 Consent Judgment if there is an inadvertent error or omission on the annual New Products list  
9 submitted to the People, provided that Defendant provides corrected information to the People  
10 within fifteen (15) days of discovery of the inadvertent error or omission.

11 **10. SEVERABILITY**

12 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
13 Consent Judgment are held by a Court to be unenforceable, the validity of the enforceable  
14 provisions remaining shall not be adversely affected.

15 **11. ENTIRE AGREEMENT**

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

22 **12. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California and apply within the State of California.

25 **13. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant  
27 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
28



1 registered or certified mail, return receipt requested; or (ii) overnight courier to any party at the  
2 following addresses:

3 To Defendant:

4 Trenton H. Norris, Esq.  
5 Monty Agarwal, Esq.  
6 Rhonda Stewart Goldstein, Esq.  
7 Arnold & Potter LLP  
8 One Embarcadero Center  
9 22nd Floor  
10 San Francisco, CA 94111-3711

11 Alan Rubinstein, President  
12 Pure Essence Laboratories, Inc.  
13 P.O. Box 95397  
14 Las Vegas, NV 89193

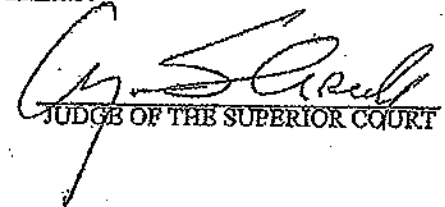
15 -or-  
16 6155 South Sandhill Rd., Ste. 200  
17 Las Vegas, NV 89120

18 To the Office of the Attorney General:

19 Laura J. Zuckerman, Esq.  
20 Timothy E. Sullivan, Esq.  
21 California Department of Justice  
22 P.O. Box 70550  
23 1515 Clay Street, Suite 2000  
24 Oakland, CA 94612

25 Any party, from time to time, may specify in writing to the other a change of address to which all  
26 notices and other communications shall be sent.

27 IT IS SO ORDERED, ADJUDGED, AND DECREED:

28 Dated: June 19, 2012   
JUDGE OF THE SUPERIOR COURT

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**EXHIBIT A: Covered Products**

- 1
- 2 Life Essence
- 3 Life Essence Powder
- 4 Life Essence Women's Formula
- 5 Life Essence Men's Formula
- 6 Longevity Men's Formula
- 7 Longevity Women's Formula
- 8 One 'n' Only
- 9 One 'n' Only Women's Formula
- 10 One 'n' Only Men's Formula
- 11 One 'n' Only PreNatal
- 12 Mother to Be
- 13 Mother and Child
- 14 ProFema
- 15 Ionic Fizz Calcium Plus, Raspberry Lemonade
- 16 Ionic Fizz Magnesium Plus, Raspberry Lemonade
- 17 Ionic Fizz Calcium Plus, Orange-Vanilla
- 18 Ionic Fizz Magnesium Plus, Orange-Vanilla
- 19 Ionic Fizz Calcium Plus, Mixed Berry
- 20 Ionic Fizz Magnesium Plus, Mixed Berry
- 21 Ionic Fizz Super D-K Calcium Plus, Raspberry Lemonade
- 22 Ionic Fizz Super D-K Calcium Plus, Orange-Vanilla
- 23 Ionic Fizz Super D-K Calcium Plus, Mixed Berry
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**EXHIBIT B: Released Products**

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Longevity Women's Formula

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One 'n' Only Women's Formula

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**EXHIBIT C: Designated Symbol**



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**EXHIBIT D: Letter to Retailers and Distributors**

(For use if Defendant provides sign and symbol warnings pursuant to Section 2.2(a))

**THIS COMMUNICATION APPLIES ONLY TO  
RETAIL LOCATIONS IN CALIFORNIA**

[Defendant] has entered into a consent judgment with the Attorney General for the State of California regarding the presence of lead in specified dietary supplements sold in California.

Under the terms of this consent judgment, [Defendant] is providing the enclosed sign warnings to you so that they can be posted in retail stores selling any of the specified dietary supplements identified below in California.

If you are a retailer, we request that you post copies of these signs in or on any shelf(ves), displays, or aisle(s) where the identified products are sold. If you are a distributor, we request that you provide these signs to all retailers to whom you distribute the identified products and instruct them to post copies of these signs in or on any shelf(ves), displays, or aisle(s) where the identified products are sold. Alternatively, if any store has less than 7,500 square feet of retail space and no more than two cash registers, or the store's principal purpose is to sell dietary supplements, the sign may be posted at each cash register. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers.

Please sign and return the written acknowledgment below within 30 days of receiving this letter to acknowledge that you have received the signs and that they will be posted in accordance with these specifications until you receive written instruction from [Defendant] to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate sign locations for your specific retail store(s), please contact [Contact Information]

Acknowledged by:

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Company/Store Location)

\_\_\_\_\_ (Date)

List of Products

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**EXHIBIT E: Follow-Up Letter to Retailers and Distributors**

(For use if Defendant provides sign and symbol warnings pursuant to Section 2.2(a))

**THIS COMMUNICATION APPLIES ONLY TO  
RETAIL LOCATIONS IN CALIFORNIA**

On [Date], [Defendant] sent you a letter enclosing sign warnings for posting in your stores in California, or stores in California to which you distribute its dietary supplements, pursuant to a consent judgment entered into between [Defendant] and the Attorney General for the State of California regarding the presence of lead in specified dietary supplements sold in California.

Copies of these signs are to be posted in or on any shelf(ves), displays, or aisle(s) where any of the specified dietary supplements identified below are sold in your stores in California or stores in California to which you distribute these supplements. Alternatively, if any store has less than 7,500 square feet of retail space and no more than two cash registers, or the store's principal purpose is to sell dietary supplements, the sign may be posted at each cash register. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers.

We have not received your written acknowledgment that you have received the signs and that your stores will post these signs, or, if you are a distributor, that you will provide the signs and instructions to retailers to whom you distribute the identified products. Please sign and return the written acknowledgement below as soon as possible to acknowledge that you have received the signs and that they will be posted or provided in accordance with these specifications until you receive written instruction from [Defendant] to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate sign locations for specific retail stores, please contact [Contact Information]

Acknowledged by:

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Company/Store Location)

\_\_\_\_\_ (Date)

List of Products