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801 S. Grand Avenue, Ste. 1100  
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4  
5 Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER

REC'D

JUL 08 2011  
FILING WINDOW

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10  
11 ENVIRONMENTAL RESEARCH CENTER, a ) CASE NO.  
non-profit California corporation, )

12 )  
13 Plaintiff, )

14 NNC LLC dba NATURADE, a Delaware )  
limited liability company, )

15 Defendant. )  
16 )  
17 )  
18 )

[PROPOSED] STIPULATED CONSENT  
JUDGMENT

BC465087

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

20 WHEREAS:

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

24 B. NNC LLC is a Delaware limited liability company that does business as  
25 NATURADE ("NATURADE"). NATURADE allegedly manufactured, packaged, distributed,

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 marketed, and/or sold the products containing lead and lead compounds sold in the State of  
2 California (“**the Products or Product**”). “**Parties**” means ERC and NATURADE only.

3 C. The name of the Products covered under this Consent Judgment are set forth in  
4 **Exhibit A**, attached hereto (any products not set forth on Exhibit A hereto are not subject to the  
5 injunctive provisions herein, and are not covered by the release of liability herein);

6 D. On February 27, 1987, the State of California officially listed the chemical lead as a  
7 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code §  
8 25249.8;

9 E. On October 1, 1992, the State of California officially listed the chemicals lead and  
10 lead compounds as chemicals known to cause cancer, pursuant to California Health and Safety  
11 Code § 25249.8;

12 F. The Products have allegedly been sold by NATURADE for use in California since  
13 at least October 2009.

14 G. On September 23, 2010 and December 24, 2010, ERC served NATURADE and  
15 each of the appropriate public enforcement agencies with a document entitled "60-Day Notice"  
16 that provided NATURADE and the public enforcement agencies with notice that NATURADE  
17 was in violation of Proposition 65 for failing to warn purchasers and individuals using the  
18 Products that the use of the Products exposes them to lead, a chemical known to the State of  
19 California to cause cancer and/or reproductive toxicity (“**Prop. 65 Notices**”) (a copy of the 60-  
20 Day Notices are attached hereto as **Exhibit B**);

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

25 I. For purposes of this Consent Judgment only, the Parties stipulate that this Court

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties,  
2 that venue is proper in this Court, and that this Court has jurisdiction to enter a Consent  
3 Judgment pursuant to the terms set forth herein;

4 J. The Parties enter into this Consent Judgment to settle disputed claims between  
5 them and to avoid prolonged litigation. By execution of this Consent Judgment, NATURADE  
6 does not admit any violations or the applicability of Proposition 65. Except for the  
7 representations made above, nothing in this Consent Judgment shall be construed as an  
8 admission by NATURADE or Plaintiff of any fact, issue of law, or violation of law, nor shall  
9 compliance with this Consent Judgment constitute or be construed as an admission by  
10 NATURADE or Plaintiff of any fact, issue of law, or violation of law;

11 K. Except as expressly provided herein, nothing in this Consent Judgment shall  
12 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or  
13 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,  
14 responsibilities, and duties of any Party to this Consent Judgment; and,

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

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

19  
20 1. **Injunctive Relief.** On and after the Effective Date of this Consent Judgment,  
21 NATURADE shall not manufacture for sale in the State of California, distribute into the State of  
22 California, or directly sell in the State of California any Product for which the maximum dose  
23 recommended on the label contains more than 0.5 micrograms (**mcg**) of lead, excluding the following  
24 amounts of naturally occurring lead in the ingredients listed below in Table 1A in accordance  
25

1 with the Attorney General's Stipulation Modifying Consent Judgments in *People v. Warner*  
2 *Lambert et al.* (San. Fran. Sup. Ct. Case No. 984503) :

3 **TABLE 1A**

4

<u>INGREDIENT</u>	<u>NATURALLY OCCURRING AMOUNT OF LEAD</u>
<u>Calcium</u>	<u>.8 mcg /1000 milligrams</u>
<u>Ferrous Fumarate</u>	<u>.4 mcg/g</u>
<u>Zinc Oxide</u>	<u>8.0 mcg/g</u>
<u>Magnesium Oxide</u>	<u>.4 mcg/g</u>
<u>Magnesium Carbonate</u>	<u>.332 mcg/g</u>
<u>Magnesium Hydroxide</u>	<u>.4 mcg/g</u>
<u>Zinc Gluconate</u>	<u>.8 mcg/g</u>
<u>Potassium Chloride</u>	<u>1.1 mcg/g</u>

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16 2. For Products that cause exposures in excess of that permitted by Paragraph 1,  
17 unless NATURADE can prove that the excess exposure is caused solely by "naturally occurring"  
18 lead at the "lowest level currently feasible," as set forth in 27 California Code of Regulations §  
19 25501(a), NATURADE shall, at the point of manufacture, prior to shipment to California, or  
20 prior to distribution within California, (1) affix to or print on the Product container, cap, label, or  
21 unit package, or (2) display at the point of sale of the Products the following warning (the  
22 language in brackets in the warning below is optional):

23

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

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 The term “cancer” shall be included in the warning only if there is an exposure to a daily dose of  
2 more than 15 micrograms of lead when taken as directed on the Product’s label and as defined by  
3 the quality control methodology set forth in paragraph 4 below.

4           3. The warning required by paragraph 2 above shall be prominently affixed to, printed  
5 on, or displayed proximately to the point of sale of each Product with such conspicuousness, as  
6 compared with other words, statements, designs, or devices on the labeling as to render it likely  
7 to be read and understood by an ordinary individual under customary conditions of purchase or  
8 use. If the warning is displayed on the Product container or labeling, the warning shall be at least  
9 the same size as the largest of any other health or safety warnings on the product container or  
10 labeling, and the word “warning” shall be in all capital letters and in bold print. If printed on the  
11 labeling itself, the warning shall be contained in the same section of the labeling that states other  
12 safety warnings concerning the use of the Product. The requirement for Product labeling set  
13 forth herein is imposed pursuant to the terms of this Consent Judgment and is recognized by the  
14 parties as not being the exclusive method of providing a warning for the Products under  
15 Proposition 65 and its implementing regulations.

16           4. Once a year, on or before the anniversary of the entry of the Consent Judgment,  
17 NATURADE shall undertake testing of the Products. NATURADE (itself or through another)  
18 shall test at least two (2) randomly-selected samples of each Product for lead content, to confirm  
19 that the daily dose is no more than .5 micrograms of lead plus the allowable amounts of the lead  
20 for the ingredients listed in Table 1A when taken as directed on the Product’s label. All testing  
21 pursuant to this Consent Judgment shall be performed by a laboratory certified by the California  
22 Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory

1 that is approved by, accredited by, or registered with the United States Food & Drug  
2 Administration for the analysis of heavy metals. The method of selecting samples for testing  
3 must comply with the regulations of the Food and Drug Administration as set forth in Title 21,  
4 Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for  
5 lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and  
6 closed-vessel, microwave-assisted digestion employing high-purity reagents<sup>1</sup> or any other testing  
7 method agreed upon in writing by the parties. Nothing in this Consent Judgment shall limit  
8 NATURADE's ability to conduct, or require that others conduct, additional testing of the  
9 Products, including the raw materials used in their manufacture. This Consent Judgment,  
10 including the testing and sampling methodology set forth in this paragraph, is the product of  
11 negotiation and compromise, and is accepted by the parties for purposes of settling,  
12 compromising, and resolving issues disputed in this action, including future compliance by  
13 NATURADE with this Consent Judgment, and shall not be used for any other purpose, or in any  
14 other matter and, except for the purpose of determining future compliance with this Consent  
15 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed  
16 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g). For  
17 the first two years from the date of this Consent Judgment, NATURADE shall provide any test  
18 results and documentation to ERC within 30 working days of completion of the testing;  
19 thereafter upon written request from ERC, and shall retain all test results and documentation  
20 from the date testing commenced.

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24 <sup>1</sup> See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and

1           5.     The requirements of paragraphs 1, 2, 3 and 4 above, will only apply to any time in  
2 which NATURADE is a “person in the course of doing business,” as that term is defined in  
3 Health and Safety Code § 25249.11(b). NATURADE represents that at the time it stipulated to  
4 entry of this Consent Judgment it was not a “person in the course of doing business” because it  
5 had fewer than 10 employees. NATURADE represents that it understands that even if  
6 NATURADE is not a “person in the course of doing business” under Proposition 65, other  
7 companies in its chain of distribution (such as manufacturers, retailers, or distributors) that have  
8 10 or more employees are not exempt from Proposition 65 and could violate Proposition 65 by  
9 knowingly and intentionally exposing individuals to chemicals contained in NATURADE  
10 products without first giving a clear and reasonable warning.

11  
12           6.     If at any time in the future NATURADE employs 10 or more employees, it will  
13 notify ERC of this fact within 30 days. If ERC sends a written request to NATURADE for proof  
14 of the number of employees of NATURADE, within 45 days NATURADE will provide all  
15 appropriate documentation to ERC showing the number of employees it has employed in the  
16 previous 24 months.

17  
18           7.     NATURADE within nine (9) months of the Effective Date will put a recommended  
19 daily dose in writing on the label for all the Products. NATURADE will comply with this  
20 requirement regardless of whether it is a “person in the course of doing business,” as that term is  
21 defined in Health and Safety Code § 25249.11(b).

22           8.     NATURADE within thirty (30) days of the Effective Date will instruct all of its  
23  
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25 Children’s Vitamins, J. Agric. Food Chem. 2008, 56, 6892-96.

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

1 customer service personnel responding to consumer inquiries by phone, e-mail or other  
2 correspondence not to consume more than the a recommended daily dose on the writing on the  
3 label for all the Products. NATURADE will comply with this requirement regardless of whether  
4 it is a "person in the course of doing business," as that term is defined in Health and Safety Code  
5 § 25249.11(b).  
6

7       10.     **Civil Penalty Assessment.** NATURADE agrees to pay a civil penalty in the  
8 amount of \$6,675.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff shall remit 75% of  
9 this amount to the State of California pursuant to Health & Safety Code §25192.

10       11.     **Payment In Lieu of Further Civil Penalties.** NATURADE agrees to make an  
11 additional payment in lieu of further civil penalties in the amount of \$19,825.00 to ERC for  
12 projects to reduce exposures to toxic chemicals, and to increase consumer, worker and  
13 community awareness of the health hazards posed by toxic chemicals.

14       12.     **Reimbursement of Plaintiff's Fees and Costs.** NATURADE agrees to  
15 reimburse Plaintiff's reasonable investigative, expert and attorneys' fees and costs incurred as a  
16 result of investigating and bringing this matter to the attention of NATURADE, and negotiating a  
17 settlement in the public interest; these fees and costs total \$26,000.00.

18       13.     **Payment Schedule.** Pursuant to Paragraphs 9, 10 and 11 herein, NATURADE  
19 agrees to remit the total amount of \$52,500.00 to Plaintiff, payable to: the "Law Offices of  
20 Gideon Kracov Client Trust Account" and remitted to the Law Office of Gideon Kracov at the  
21 law firm's address noted in the Notice provision below. The schedule for the payment of these  
22 funds shall be as follows: (a) an initial payment of \$12,500.00 within five (5) calendar days of  
23 execution of this Consent Judgment (to be held in trust by ERC until approval of this Consent  
24 Judgment); and, if this Consent Judgment is approved, (b) \$10,000.00 payment each for four  
25



1 consecutive months thereafter. In the event that any payments owed under this Consent  
2 Judgment is not remitted on or before its due date, NATURADE shall be deemed to be in default  
3 of its obligations under this Consent Judgment. Plaintiff shall provide written notice to  
4 NATURADE of any default; if NATURADE fails to remedy the default within two (2) business  
5 days of such notice, then all future payments due hereunder shall become immediately due and  
6 payable, with the prevailing federal funds rate applying to all interest accruing on unpaid  
7 balances due hereunder, beginning on the due date of the funds in default.

8 **13. Plaintiff's Release of NATURADE; includes A "Downstream Release."**

9 Plaintiff, acting on behalf of itself and acting on behalf of the general public, permanently and  
10 fully releases NATURADE, its parents, subsidiaries, affiliates (including those companies that  
11 are under common ownership and/or common control), shareholders, directors, members,  
12 officers, employees, and attorneys, and each entity to whom each of them directly or indirectly  
13 distributed or sold the Products, including iHerb, Inc. but not limited to distributors, wholesalers,  
14 customers, retailers, franchisees, and any other person or entity in the course of doing business  
15 who distributed, marketed or sold the products, from all claims of any nature asserted in the Prop.  
16 65 Notices.

17 **14. Limits of Release.** Nothing in this release is intended to apply to any  
18 occupational or environmental exposures arising under Proposition 65 nor shall it apply to any  
19 NATURADE products not set forth on Exhibit A to this Consent Judgment.

20 **15. Release of Environmental Research Center.** NATURADE, by this Consent  
21 Judgment, waives all rights to institute any form of legal action against ERC for all actions or  
22 statements made or undertaken by ERC in the course of seeking enforcement of Proposition 65  
23 against the named NATURADE by means of the Prop. 65 Notices.

24 **16. Motion for Approval of Consent Judgment/Notice to the California Attorney**  
25 **General's Office.** Upon execution of this Consent Judgment by the Parties, Plaintiff shall notice

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

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

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

20       18.     **Enforcement.** In the event that a dispute arises with respect to any of the  
21 provisions of this Consent Judgment, this Consent Judgment may be enforced pursuant to Code  
22 of Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any such  
23 dispute shall be awarded all reasonable fees and costs incurred.

24       19.     **Governing Law.** The terms of this Consent Judgment shall be governed by the  
25 laws of the State of California.

26 [PROPOSED] STIPULATED CONSENT JUDGMENT

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

4           Environmental Research Center  
5           5694 Mission Center Road, #199  
6           San Diego, CA 92108

7           And to:

8           Gideon Kracov  
9           801 S. Grand Ave., 11<sup>th</sup> Fl.  
          Los Angeles, CA 90017

10          All correspondence to NATURADE shall be mailed to:

11          NNC LLC  
12          1 City Boulevard West, Suite 1440  
          Orange, CA 92868

13          And to:

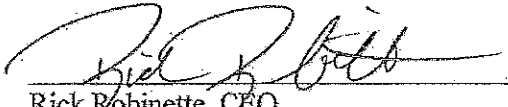
14          Todd Harrison  
15          Venable LLC  
16          575 7th Street, NW  
          Washington, DC 20004

17          21.    **Integration & Modification.** This Consent Judgment, together with the Exhibits  
18 hereto which are specifically incorporated herein by this reference, constitutes the entire  
19 agreement between the Parties relating to the rights and obligations herein granted and assumed,  
20 and supersedes all prior agreements and understandings between the Parties. This Consent  
21 Judgment may be modified only upon the written agreement of the Parties.

22          22.    **Counterparts.** This Consent Judgment may be executed in counterparts, each of  
23 which shall be deemed an original, and all of which, when taken together, shall constitute one  
24 and the same document.

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

4  
5 DATED: \_\_\_\_\_ By: \_\_\_\_\_  
6 Chris Heptinstall, Executive Director  
7 ENVIRONMENTAL RESEARCH CENTER

8 DATED: 7-8-2011 By:   
9 Rick Robinette, CEO  
10 NNC LLC dba NATURADE

11 IT IS SO ORDERED.

12 Dated: \_\_\_\_\_  
13 \_\_\_\_\_  
14 Judge of the Superior Court

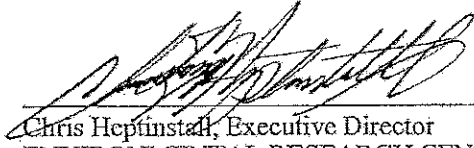
15 **EXHIBIT A - Product List**

16 **EXHIBIT B - September 23, 2010 and December 24, 2010 Prop. 65 Notices to NATURADE**

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

DATED: 7/8/2011

By:   
Chris Heptinstall, Executive Director  
ENVIRONMENTAL RESEARCH CENTER

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

By: \_\_\_\_\_  
Rick Robinette, CEO  
NNC LLC dba NATURADE

IT IS SO ORDERED.

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

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

EXHIBIT A - Product List

EXHIBIT B - September 23, 2010 and December 24, 2010 Prop. 65 Notices to NATURADE

EXHIBIT A

PRODUCT LIST

- 1
- 2
- 3 Naturade 100% Soy Protein Booster – Natural
- 4 Naturade Calcium Shake – Vanilla
- 5 Naturade Complete Cleanse Step 1 All-Natural Herbs
- 6 Naturade Cleanse Step 2 Bio-Active Fiber
- 7 Naturade Veg Protein Booster Natural Flavor
- 8 Naturade N-R-G Protein Booster Vanilla Flavor
- 9 Naturade Total Soy Meal Replacement Vanilla
- 10 Naturade Total Soy Meal Replacement Chocolate
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EXHIBIT B  
Prop 65. Notices

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[PROPOSED] STIPULATED CONSENT JUDGMENT



## Environmental Research Center

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

September 24, 2010

### VIA CERTIFIED MAIL

Current CEO or President  
NNC, LLC  
1 City Blvd W Suite 1440  
Orange, CA 92868

NATIONAL REGISTERED AGENTS, INC.  
(NNC LLC's Agent for Service of Process)  
160 Greentree Drive, Suite 101  
Dover, DE 19904

Rick Robinette  
(NNC, LLC.'s Agent for Service of Process)  
17595 Edgewood LN  
Yorba Linda, CA 92886

Current CEO or President  
Naturade (a division of NNC LLC)  
1 City Blvd. West., Suite 1440  
Orange, CA 92868

Current CEO or President  
Naturade Operating Corp.  
1 City Blvd W Ste 1440  
Orange, CA 92868

UNITED CORPORATE SERVICES, INC.  
(Naturade Operating Corp.'s Agent for  
Service of Process)  
874 Walker Road, Suite C  
Dover, DE 19904

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

Re: Notice of Violation against NNC LLC, Naturade, and Naturade Operating Corp. for Violation of California Health & Safety Code Section 25249.6



Dear Prosecutors:

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

This letter constitutes notification that NNC LLC, Naturade, and Naturade Operating Corp., located at 1 City Blvd W Ste 1440 Orange, CA 92868 have violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, these Companies have manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since September 24, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

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

NNC LLC, Naturade, and Naturade Operating Corp. are exposing people to lead from the following products:

- NNC LLC - Naturade 100% Soy Protein Booster - Natural
- NNC LLC - Naturade Calcium Shake - Vanilla
- NNC LLC - Naturade Complete Cleanse Step 1 All-Natural Herbs
- NNC LLC - Naturade Complete Cleanse Step 2 Bio-Active Fiber

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

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

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

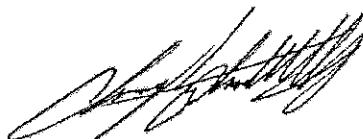
September 24, 2010

Page 3

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

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

Sincerely,



Chris Heptinstall  
Executive Director, Environmental Research Center

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to NNC, LLC., Naturade, Naturade Operating Corp., and their Registered Agents 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 NNC LLC, Naturade, and Naturade Operating Corp.**

I, Gideon Kracov, declare:

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



Dated: September 24, 2010

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

**CERTIFICATE OF SERVICE**

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

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

On September 24, 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 CEO or President  
NNC LLC  
1 City Blvd W Suite 1440  
Orange, CA 92868

Current CEO or President  
Naturade (a division of NNC LLC)  
1 City Blvd. West., Suite 1440  
Orange, CA 92868

NATIONAL REGISTERED AGENTS, INC.  
(NNC, LLC's Agent for Service of Process)  
160 Greentree Drive, Suite 101  
Dover, DE 19904

Current CEO or President  
Naturade Operating Corp.  
1 City Blvd W Ste 1440  
Orange, CA 92868

Rick Robinette  
(NNC LLC's Agent for Service of Process)  
17595 Edgewood LN  
Yorba Linda, CA 92886

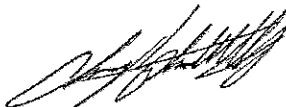
UNITED CORPORATE SERVICES, INC.  
(Naturade Operating Corp.'s Agent for Service of Process)  
874 Walker Road, Suite C  
Dover, DE 19904

On September 24, 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 September 24, 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 24, 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 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.*

September 24, 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

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Riverside, CA 92501

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

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

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

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

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

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

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

District Attorney, San Mateo County  
400 County 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  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

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

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

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

District Attorney, Sonoma County  
600 Administration Drive, Room 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

December 23, 2010

### VIA CERTIFIED MAIL

Current CEO or President  
NNC, LLC  
1 City Blvd W Suite 1440  
Orange, CA 92868

NATIONAL REGISTERED AGENTS, INC.  
(NNC LLC's Agent for Service of Process)  
160 Greentree Drive, Suite 101  
Dover, DE 19904

Rick Robinette  
(NNC, LLC.'s Agent for Service of Process)  
17595 Edgewood LN  
Yorba Linda, CA 92886

Current CEO or President  
Naturade (a division of NNC LLC)  
1 City Blvd. West., Suite 1440  
Orange, CA 92868

Current CEO or President  
Naturade Operating Corp.  
1 City Blvd W Ste 1440  
Orange, CA 92868

UNITED CORPORATE SERVICES, INC.  
(Naturade Operating Corp.'s Agent for  
Service of Process)  
874 Walker Road, Suite C  
Dover, DE 19904

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

**Re: Notice of Violation against NNC LLC, Naturade, and Naturade Operating Corp. for Violation of California Health & Safety Code Section 25249.6**

Dear Prosecutors:

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

This letter constitutes notification that NNC LLC, Naturade, and Naturade Operating Corp., located at 1 City Blvd W Ste 1440 Orange, CA 92868 have violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, these Companies have manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since December 23, 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 purchasers and users.

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

NNC LLC, Naturade, and Naturade Operating Corp. are exposing people to lead from the following products:

- Naturade Veg Protein Booster Natural Flavor (426g)**
- Naturade N-R-G Protein Booster Vanilla Flavor (426g)**
- Naturade Total Soy Meal Replacement Chocolate 540g**
- Naturade Total Soy Meal Replacement Vanilla 540g**

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

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



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

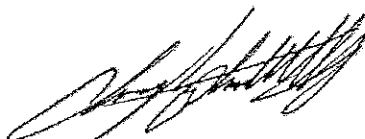
December 23, 2010

Page 3

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

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

Sincerely,



Chris Heptinstall  
Executive Director, Environmental Research Center

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to NNC, LLC.; Naturade; Naturade Operating Corp.; and their Registered Agents 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 NNC LLC, Naturade, and Naturade Operating Corp.**

I, Gideon Kracov, declare:

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



Dated: December 23, 2010

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

**CERTIFICATE OF SERVICE**

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

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

On December 23, 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 CEO or President  
NNC LLC  
1 City Blvd W Suite 1440  
Orange, CA 92868

Rick Robinette  
(NNC LLC's Agent for Service of  
Process)  
17595 Edgewood LN  
Yorba Linda, CA 92886

Current CEO or President  
Naturade Operating Corp.  
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Dover, DE 19904

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1 City Blvd. West., Suite 1440  
Orange, CA 92868

United Corporate Services, Inc.  
(Naturade Operating Corp.'s  
Agent for Service of Process)  
874 Walker Road, Suite C  
Dover, DE 19904

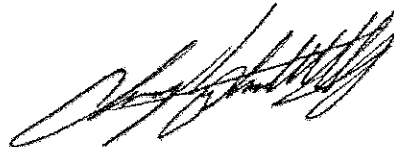
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Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

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Executed on December 23, 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  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 23, 2010

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District Attorney, San Francisco County  
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Stockton, CA 95201

District Attorney, San Luis Obispo County  
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San Luis Obispo, CA 93408

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San Jose, CA 95110

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Santa Cruz, CA 95060

District Attorney, Shasta County  
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Los Angeles, CA 90012

San Diego City Attorney's Office  
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San Diego, CA 92101

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

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

PROOF OF SERVICE

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

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 801 S. Grand Ave., 11<sup>th</sup> Fl., LA, CA 90017. On July 8, 2011, I served this list of persons with the following documents: Proposed Consent Judg., Motion to Approve and Enter Proposed Consent Judgment, Decl. of Kracov, Decl. of Heptinstall

The documents were served on:

Todd Harrison  
Venable LLC  
575 7th Street, NW  
Washington, DC 20004

✓  
\_\_\_\_\_

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

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

Executed this 7/8, 2011 at Los Angeles, California.

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