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5 Attorneys for Plaintiff
6 ENVIRONMENTAL RESEARCH CENTER

7 Margaret Carew Toledo (SBN 181227)
8 MENNEMEIER, GLASSMAN & STROUD LLP
9 980 9th Street, Suite 1700
Sacramento, CA 95814
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10 Attorneys for Defendant
11 OLYMPIAN LABS, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15
16 ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,
17 Plaintiff,
18 v.
19 OLYMPIAN LABS, INC., and DOES 1-100;
20 Defendants.
21

CASE NO. CGC-10-505663

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT; ~~PROPOSED~~ ORDER

Health & Safety Code § 25249.5 et seq.

ACTION FILED: November 29, 2010
TRIAL DATE: May 7, 2012

ENDORSED
FILED
JUN 19 2012
CLERK OF THE COURT
MARTA VALLEJO
Deputy Clerk
San Francisco County Superior Court

1 1. **INTRODUCTION**

2 1.1 On November 29, 2010, Plaintiff Environmental Research Center ("ERC"), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing its
4 Complaint for civil penalties and injunctive relief pursuant to the provisions of California Health
5 & Safety Code section 25249.5, *et seq.* ("Proposition 65") against Defendant Olympian Labs, Inc.
6 ("Olympian"). ERC alleges that certain products ("Covered Products") manufactured, distributed
7 and sold by Olympian contain lead, a chemical listed under Proposition 65 as a carcinogen and
8 reproductive toxin, and thus require a Proposition 65 warning. The Covered Products are listed by
9 name in Exhibit A to this Consent Judgment. ERC and Olympian shall sometimes be referred to
10 individually as a "Party" or collectively as the "Parties."

11 1.2 Olympian employs ten or more persons. Olympian distributes and sells the
12 Covered Products.

13 1.3 The Complaint is based on allegations contained in the Notices of Violations dated
14 September 4, 2010 and October 22, 2010, served by ERC on the California Attorney General,
15 other public enforcers, and Olympian. True and correct copies of the Notices of Violations are
16 attached hereto as Exhibit B. No public enforcer has filed suit against Olympian with regard to the
17 Covered Products or the alleged violations.

18 1.4 ERC's Notices of Violations and the Complaint in this action allege that Olympian
19 exposes persons in California to lead without first providing clear and reasonable warnings, in
20 violation of California Health & Safety Code section 25249.6. Olympian denies all material
21 allegations of the Notices of Violations and the Complaint, has asserted numerous affirmative
22 defenses, and specifically denies that the Covered Products require a Proposition 65 warning or
23 otherwise cause harm to any person.

24 1.5 The Parties have entered into this Consent Judgment in order to settle, compromise
25 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
26 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission
27 by the Parties of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or

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1 liability, including without limitation, any admission concerning any alleged violation of
2 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine.

3 1.6 Except as expressly set forth herein, nothing in this Consent Judgment shall
4 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
5 other or future legal proceeding unrelated to these proceedings.

6 1.7 The Effective Date of this Consent Judgment shall be the date on which it is
7 entered as a judgment by this Court.

8 1.8 The only products covered by this Consent Judgment are the Covered Products, and
9 the only chemical covered by this Consent Judgment is lead as specifically related to the Covered
10 Products only.

11 2. JURISDICTION AND VENUE

12 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
14 over Olympian as to the acts alleged in the Complaint, that venue is proper in the County of San
15 Francisco, and that this Court has jurisdiction to enter this Consent Judgment. This Consent
16 Judgment shall have no application or effect on Olympian for Covered Products or other products
17 manufactured, distributed or sold by or on behalf of Olympian to consumers outside of the state of
18 California.

19 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

20 3.1 On and after the Effective Date, Olympian shall be permanently enjoined from
21 manufacturing for sale in California, distributing into California, or directly selling to a
22 consumer in California any of the Covered Products without complying with the warning
23 requirement set forth in Section 3.2 below. "Distributing into California" means to directly ship
24 a Covered Product into California for sale in California or to sell and/or provide a Covered
25 Product to a distributor or other person or entity that Olympian knows will sell the Covered
26 Product in California. This injunction shall not apply to products which Olympian puts into the
27 stream of commerce before the Effective Date.

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1 3.2 **Clear and Reasonable Warnings.** For those Covered Products that are subject to the
2 warning requirement of Section 3.1, Olympian shall provide the following warning as specified
3 below:

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

5 (The text in brackets in the warning above is optional, except that the term "cancer" must be
6 included only if the maximum daily dose recommended on the label contains more than 15
7 micrograms of lead.) The warning shall be prominently affixed to or printed upon the product
8 label with such conspicuousness, as compared with other words, statement or designs on the label,
9 so as to render it likely to be read and understood by the ordinary purchaser or user of the product.
10 The warning shall be the same size as the largest of any other health or safety warnings on the
11 product and the word "warning" shall be in all capital letters and in bold print.

12 3.3 **Testing.**

13 (a) Once a year, on or before the anniversary of the entry of the Consent Judgment,
14 Olympian shall test, or require its supplier to test, randomly selected samples of each Covered
15 Product (in the form intended for sale to the end-user) for lead content. This testing requirement
16 does not apply to Covered Products for which Olympian has provided the warning specified in
17 Section 3.2 since the Effective Date or during the preceding year.

18 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
19 Spectrometry ("ICP-MS") and closed-vessel, microwave-assisted digestion employing high-purity
20 reagents or any other testing method subsequently agreed upon in writing by the Parties.

21 (c) All testing pursuant to this Consent Judgment shall be performed by a laboratory
22 certified by the California Environmental Laboratory Accreditation Program or a laboratory that is
23 registered with the United States Food & Drug Administration.

24 (d) Olympian shall provide any test results within fifteen (15) business days of any
25 written request from ERC and shall retain all test results and documentation for a period of four
26 years from the date of the test.

27 3.4 For each Covered Product that is subject to the testing requirement of Section 3,
28 Olympian shall require its vendors to provide a certificate of analysis for each raw material

1 ingredient of such Covered Products, with a separate line on each such certificate of analysis
2 showing the lead content expressed in micrograms per gram or its equivalent. Olympian shall
3 retain all such certificates of analysis for a period of four years from the date of the test.

4 4. SETTLEMENT PAYMENT

5 4.1 In full and final satisfaction of all potential civil penalties, payment in lieu of civil
6 penalties, attorney's fees, and costs, Olympian shall make a total payment of \$80,000.00 ("Total
7 Settlement Amount"), payable to "Environmental Research Center-ERC Escrow Account" within
8 ten (10) business days of receiving the Notice of Entry of this Consent Judgment. The Total
9 Settlement Amount shall be sent directly to ERC at the following address:

10 Environmental Research Center
11 3111 Camino del Rio North, Suite 400
12 San Diego, CA 92108

13 Olympian shall also issue a single IRS Federal Tax Form 1099 for the above payment to ERC.
14 Sections 4.2-4.4 below describe the agreed partition of the Total Settlement Amount.

15 4.2 As a portion of the Total Settlement Amount, \$3,500 shall be civil penalties
16 pursuant to California Health & Safety Code section 25249.7(b)(1). ERC shall remit 75%
17 (\$2,625) of the civil penalties to the Office of Environmental Health Hazard Assessment
18 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
19 with Cal. Health & Safety Code § 25249.12(c)(1), and a copy of the transmittal letter will be sent
20 to counsel for Olympian. ERC shall retain the remaining 25% (\$875) of the civil penalties in
21 accordance with Cal. Health & Safety Code § 25249.12(d).

22 4.3 As a portion of the Total Settlement Amount, \$12,008.10 shall be a reimbursement
23 to ERC for reasonable investigation costs associated with the enforcement of Proposition 65 and
24 other expenses and costs incurred as a result of investigating, bringing this matter to Olympian's
25 attention, and litigating and negotiating this settlement in the public interest.

26 4.4 As a portion of the Total Settlement Amount, \$64,491.90 shall be a reimbursement
27 of ERC's attorney's fees.

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1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may be modified only by written agreement and stipulation of the
3 Parties or upon noticed motion filed by any Party, followed by entry of a modified consent
4 judgment by the Court.

5 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
6 **JUDGMENT**

7 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
8 this Consent Judgment.

9 6.2 Only after it complies with Section 10 below, any Party may, by motion or
10 application for an order to show cause filed with this Court, enforce the terms and conditions
11 contained in this Consent Judgment.

12 **7. APPLICATION OF CONSENT JUDGMENT**

13 This Consent Judgment shall apply to, be binding upon the Parties, and their respective
14 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
15 affiliates, and the successors or assigns of any of them.

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

17 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on
18 behalf of itself and in the public interest, and Olympian of any alleged violation of Proposition 65
19 or its implementing regulations, and fully and finally resolves all claims that have been or could
20 have been asserted in this action against Olympian for failure to provide Proposition 65 warnings
21 for the Covered Products regarding lead.

22 8.2 ERC, acting on its own behalf and in the public interest, releases Olympian and its
23 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
24 divisions, affiliates, franchisees, licensees, predecessors, successors and assigns, and suppliers,
25 manufacturers, distributors, wholesalers, retailers and all other entities in the distribution chain of
26 any of the Covered Products (collectively, "Released Parties"), from all claims for violations of
27 Proposition 65 up through the Effective Date based on exposure to lead from the Covered
28 Products as set forth in the Notices of Violations and the Complaint.

1 8.3 ERC, on behalf of itself only, hereby releases and discharges the Released Parties
2 from any and all known and unknown past, present, and future rights, claims, causes of action,
3 suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs,
4 and expenses arising from or related to the claims asserted, or that could have been asserted, under
5 state or federal law, regarding the presence of lead in the Covered Products that were
6 manufactured before the Effective Date or the facts alleged in the Notices of Violations or the
7 Complaint, including without limitation any and all claims concerning exposure of any person to
8 lead in the Covered Products that were manufactured before the Effective Date.

9 8.4 Compliance with the terms of this Consent Judgment constitutes compliance with
10 Proposition 65 with respect to exposures to lead from the Covered Products as set forth in the
11 Notices of Violations and the Complaint.

12 8.5 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
13 now known to the Parties arising out of the facts alleged in the Notices of Violations or the
14 Complaint and relating to the Covered Products that were manufactured before the Effective Date
15 will develop or be discovered. ERC, on behalf of itself only, also waives California Civil Code
16 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

17
18 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
19 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**
20 **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
21 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
22 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

23 8.6 ERC on behalf of itself only, on the one hand, and Olympian, on the other hand,
24 release and waive all claims they may have against each other and their respective officers,
25 directors, employees, agents, representatives and attorneys for any statements or actions made or
26 undertaken by them or their respective officers, directors, employees, agents, representatives and
27 attorneys in connection with the Notices of Violations or this action.

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

 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
respective counsel for the Parties prior to its signing, and each Party has had an opportunity to

1 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
2 construction of this Consent Judgment, the terms and conditions shall not be construed against any
3 Party based on the fact that one of the Parties and/or one of the Parties' counsel prepared and/or
4 drafted all or any portion of this Consent Judgment. It shall be conclusively presumed that all of
5 the Parties participated equally in the preparation and drafting of this Consent Judgment.

6 9.2 In the event that any of the provisions of this Consent Judgment are held by a court
7 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

8 **10. NOTICE AND CURE**

9 10.1 No motion to enforce this Consent Judgment or application to show cause may be
10 filed by any Party, unless the Party seeking enforcement notifies the other Party of the specific
11 acts alleged to breach this Consent Judgment at least thirty (30) days before filing and serving any
12 such motion or application.

13 10.2 The Party in alleged breach shall have fifteen (15) days from the date of receiving
14 the notice described in Section 10.1 to cure the alleged breach to the satisfaction of the Party
15 seeking enforcement of this Consent Judgment. Should the Parties be unable to resolve the
16 dispute, any Party may seek relief under Section 6 of this Consent Judgment.

17 **11. GOVERNING LAW**

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

20 **12. PROVISION OF NOTICE**

21 All notices required by this Consent Judgment to be given to any Party shall be sent by
22 first-class, registered, or certified mail, or overnight delivery, to the following:

23 **For Environmental Research Center:**
24 Chris Heptinstall, Executive Director
25 Environmental Research Center
26 3111 Camino del Rio North, Suite 400
27 San Diego, CA 92108

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1 Philip T. Emmons
2 Law Office of Philip T. Emmons
3 1990 N. California Blvd., 8th Floor
4 Walnut Creek, CA 94596

5 Karen Evans
6 Law Office of Karen A. Evans
7 4218 Biona Place
8 San Diego, CA 92116

9 For Olympina:

10 Donna Shiroma
11 Sr. Vice President, Commercial Operations & General Counsel
12 ASCEND Therapeutics
13 607 Herndon Parkway, Suite 110
14 Herndon, Virginia 20170

15 Margaret Carew Toledo
16 Memensier, Glassman & Stroud LLP
17 980 9th Street, Suite 1700
18 Sacramento, CA 95814

19 **13. COURT APPROVAL**

20 13.1 This Consent Judgment shall be effective only after it has been entered by the
21 Court. It shall be null and void if, for any reason, it is not approved and entered by the Court
22 within one year after it has been fully executed by all Parties.

23 13.2 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
24 Motion for Approval and Entry of Consent Judgment in San Francisco County Superior Court
25 pursuant to 11 California Code of Regulations section 3000 *et seq.* This motion shall be served
26 upon all Parties and upon the California Attorney General's Office. Olympian and ERC shall use
27 their best efforts to support entry of this Consent Judgment in the form submitted to the Court for
28 approval.

13.3 If, after service of the Motion for Approval and Entry of Consent Judgment, the
California Attorney General objects in writing to any term in this Consent Judgment or files an
opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
manner prior to the hearing on the motion. If the concern of the California Attorney General is not
resolved prior to the hearing on the motion, any Party may withdraw from this Consent Judgment

1 prior to the date of the hearing, with notice to all Parties in accordance with Section 12 and notice
2 to the California Attorney General's Office, and upon such notice this Consent Judgment shall be
3 null and void.

4 **14. EXECUTION AND COUNTERPARTS**

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

8 **15. ENTIRE AGREEMENT, AUTHORIZATION**

9 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
10 of the Parties with respect to the entire subject matter hereof, and supercedes and replaces any and
11 all prior discussions, negotiations, commitments and understandings related hereto. It shall be
12 deemed that no representations, oral or otherwise, express or implied, other than those contained
13 herein have been made by any Party. No other agreements not specifically referred to herein, oral
14 or otherwise, shall be deemed to exist or to bind any of the Parties.

15 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment,
17 to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to
18 bind that Party to this Consent Judgment. The undersigned have read, understand and agree to all
19 of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each
20 Party shall bear its own attorneys' fees, costs and expenses.

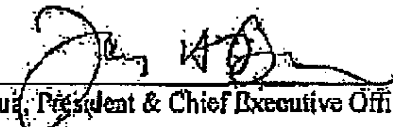
21 **IT IS SO STIPULATED:**

22 ENVIRONMENTAL RESEARCH CENTER

23 
24 _____
25 Chris Hepburn, Executive Director

Dated: 3/29/2012

26 OLYMPIAN LABS, INC.

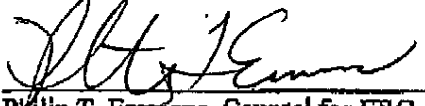
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28 _____
Jay A. Bug, President & Chief Executive Officer

Dated: March 28, 2012

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APPROVED AS TO FORM:

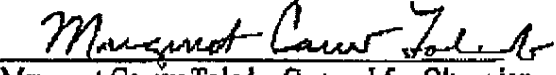
LAW OFFICE OF PHILIP T. EMMONS



Philip T. Emmons, Counsel for ERC

Dated: 3/28/12

MENNEMEIER, GLASSMAN & STROUD LLP



Margaret Carew Toledo, Counsel for Olympian

Dated: 5-21-12

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Judgment

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 6/19, 2012

JAMES J MCBRIDE

Judge, Superior Court of the State of California

EXHIBIT A

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EXHIBIT A

1. Olympian Labs Inc. Ultimate Greens Protein 8 in 1 with Hemp Protein, Vanilla-Banana-Berry Flavor
2. Olympian Labs Incorporated – Beef Protein Chocolate Flavor
3. Olympian Labs Incorporated – Glucosalage S04
4. Olympian Labs Incorporated – Greens Protein 8 in 1
5. Olympian Labs Incorporated – Maxcuts

EXHIBIT B

LAW OFFICE OF
PHILIP T. EMMONS

208 Normandy Lane
Walnut Creek, CA 94598
Tel: (925) 349-4029
E-Mail: p-emmons@hotmail.com

September 4, 2010

VIA CERTIFIED MAIL

Current CEO or President
Olympian Labs, Inc.
8445 E Hartford Dr
Scottsdale, AZ - 85255

Corporation Service Company
(Olympian Labs, Inc.'s Agent
for Service of Process)
2338 W Royal Palm Rd Suite J
Phoenix, AZ 85021

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

VIA FIRST CLASS 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 represent 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:

Olympian Labs, Inc.

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

Ultimate Greens Protein 8 in 1 w Hemp Protein Vanilla-Banana-Berry Flavor - 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 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 my client'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. ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194. However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Philip T. Emmons, Esq.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 4, 2010
Page 3

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Olympian Labs, Inc. and its Agent for Service of Process only)

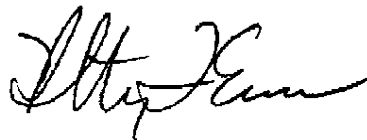
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Olympian Labs, Inc.

I, Philip T. Emmons, 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 4, 2010

Philip T. Emmons

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 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
Olympian Labs, Inc.
8445 E Hartford Dr
Scottsdale, AZ - 85255

Corporation Service Company
(Olympian Labs, Inc.'s Agent
for Service of Process)
2338 W Royal Palm Rd Suite J
Phoenix, AZ 85021

On September 4, 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:

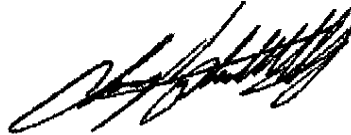
Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On September 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,

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 4, 2010
Page 6

addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by First Class 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

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

September 4, 2010

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San Diego, CA 92101

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City Hall, Room 234
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San Francisco, CA 94102

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

LAW OFFICE OF
PHILIP T. EMMONS
208 Normandy Lane
Walnut Creek, CA 94598
Tel: (925) 349-4029
E-Mail: p-emmons@hotmail.com

October 22, 2010

VIA CERTIFIED MAIL

Current CEO or President
Olympian Labs, Inc.
8445 E Hartford Dr
Scottsdale, AZ - 85255

Corporation Service Company
(Olympian Labs, Inc.'s Agent
for Service of Process)
2338 W Royal Palm Rd Suite J
Phoenix, AZ 85021

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

VIA FIRST CLASS 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 represent 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:

Olympian Labs, Inc.

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

Olympian Labs Incorporated - Beef Protein Chocolate Flavor - Lead
Olympian Labs Incorporated - Glucosalage S04 - Lead
Olympian Labs Incorporated - Greens Protein 8 in 1 - Lead
Olympian Labs Incorporated - Maxcuts - 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 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 my client'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.

ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194. However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Philip T. Emmons, Esq.

cc: Karen Evans

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Olympian Labs, Inc. and its 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 Olympian Labs, Inc.

I, Philip T. Emmons, 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 22, 2010

Philip T. Emmons

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 22, 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
Olympian Labs, Inc.
8445 E Hartford Dr
Scottsdale, AZ - 85255

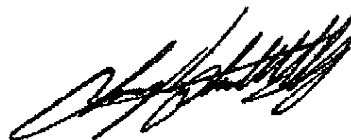
Corporation Service Company
(Olympian Labs, Inc.'s Agent
for Service of Process)
2338 W Royal Palm Rd Suite J
Phoenix, AZ 85021

On October 22, 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 22, 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 First Class Mail.

Executed on October 22, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County
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District Attorney, Orange County
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Santa Ana, CA 92701

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

October 22, 2010

Page 6

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