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16 BOTANICALS; BANYAN  
17 TRADING CO.; and BANYAN  
18 TRADING, LLC

19 SUPERIOR COURT OF CALIFORNIA  
20 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

21 ENVIRONMENTAL RESEARCH  
22 CENTER, a California non-profit  
23 corporation,

24 Plaintiffs,

25 vs.

26 BANYAN BOTANICALS, BANYAN  
27 TRADING, CO., BANYAN TRADING,  
28 LLC and DOES 1-25, Inclusive,

Defendants.

) **Case No.: 30-2013-00628499-CU-MC-CJC**

) Judge: Hon. Geoffrey T. Glass

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

) **[Health & Safety Code § 25249.5, et seq.]**

) Action Filed: February 4, 2013

1 **INTRODUCTION**

1.1 This Action arises out of the alleged violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. (also known as and herein after referred to as "Proposition 65") regarding the following

1 products (hereinafter collectively the “Covered Products” or “Covered Product” to refer to a  
2 single product):

- 3 1) Banyan Botanicals Ayurvedic Herbs I Sleep Soundly
- 4 2) Banyan Botanicals Ayurvedic Herbs Healthy Kapha
- 5 3) Banyan Botanicals Ayurvedic Herbs Ashwagandha
- 6 4) Banyan Botanicals Ayurvedic Herbs Healthy Vata
- 7 5) Banyan Botanicals Ayurvedic Herbs Haritaki
- 8 6) Banyan Botanicals Ayurvedic Herbs Healthy Hair
- 9 7) Banyan Botanicals Ayurvedic Herbs Blood Cleanse
- 10 8) Banyan Botanicals Ayurvedic Herbs Healthy Pitta
- 11 9) Banyan Botanicals Ayurvedic Herbs Heart Formula
- 12 10) Banyan Botanicals Ayurvedic Herbs Kidney Formula
- 13 11) Banyan Botanicals Ayurvedic Herbs Trim Support
- 14 12) Banyan Botanicals Ayurvedic Herbs Men’s Support
- 15 13) Banyan Botanicals Ayurvedic Herbs Shatavari
- 16 14) Banyan Botanicals Ayurvedic Herbs Vata Digest
- 17 15) Banyan Botanicals Ayurvedic Herbs Immune Support
- 18 16) Banyan Botanicals Ayurvedic Herbs Lung Formula
- 19 17) Banyan Botanicals Ayurvedic Herbs Joint Support
- 20 18) Banyan Botanicals Ayurvedic Herbs Mental Clarity
- 21 19) Banyan Botanicals Ayurvedic Herbs Kapha Digest
- 22 20) Banyan Botanicals Ayurvedic Herbs Liver Formula
- 23 21) Banyan Botanicals Ayurvedic Herbs Tranquil Mind
- 24 22) Banyan Botanicals Ayurvedic Herbs Gokshuradi Guggulu
- 25 23) Banyan Botanicals Ayurvedic Herbs Kanchanar Guggulu
- 26 24) Banyan Botanicals Ayurvedic Herbs Kaishore Guggulu
- 27 25) Banyan Botanicals Ayurvedic Herbs Stress Ease
- 28 26) Banyan Botanicals Ayurvedic Herbs Sweet Ease

1 27) Banyan Botanicals Ayurvedic Herbs Women’s Support

2 28) Banyan Botanicals Ayurvedic Herbs Para Cleanse

3 29) Banyan Botanicals Ayurvedic Herbs Pitta Digest

4 30) Banyan Botanicals Ayurvedic Herbs Neem

5 31) Banyan Botanicals Ayurvedic Herbs Triphala

6 **1.2** Plaintiff Environmental Research Center, Inc. (“ERC”) is a California non-profit  
7 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other  
8 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
9 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
10 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant  
11 to California Health and Safety Code Section 25249.7.

12 **1.3** Defendant Banyan Trading, Co. is a New Mexico Corporation that is a person  
13 within the meaning of H&S Code §25249.11(a). Defendant Banyan Trading, LLC is a New  
14 Mexico Limited Liability Company that is a person within the meaning of H&S Code  
15 §25249.11(a). Banyan Botanicals is a trade name used by Defendants Banyan Trading, Co. and  
16 Banyan Trading, LLC. At all material times, Defendants Banyan Trading, Co., and Banyan  
17 Trading, LLC were under the same ownership, dominion and control and as such were the  
18 agents, servants, and employees of each other, and acted in the course and scope of the authority  
19 granted each other. Defendants Banyan Trading, Co., and Banyan Trading, LLC are collectively  
20 referred to herein as (“BANYAN”). BANYAN manufactures, distributes and sells the Covered  
21 Products.

22 **1.4** ERC and BANYAN are hereinafter sometimes referred to individually as a  
23 “Party” or collectively as the “Parties.”

24 **1.5** On March 8, 2012, pursuant to California Health and Safety Code Section  
25 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”) on  
26 the California Attorney General, other public enforcers, and BANYAN. A true and correct copy  
27 of the Notice of Violations is attached hereto as Exhibit A.

28 **1.6** After more than sixty (60) days passed since service of the Notice of Violations,

1 and no designated governmental agency filed a complaint against BANYAN with regard to the  
2 Covered Products or the alleged violations, ERC filed the Complaint in this Action (the  
3 “Complaint”) for injunctive relief and civil penalties. The Complaint is based on the allegations  
4 in the Notice of Violations.

5       **1.7**     The Complaint and the Notice of Violations each allege that BANYAN  
6 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a  
7 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
8 consumers at a level requiring a Proposition 65 warning. They further allege that use of the  
9 Covered Products exposes persons in California to lead without first providing clear and  
10 reasonable warnings, in violation of California Health and Safety Code Section 25249.6.  
11 BANYAN denies all material allegations of the Notice of Violations and the Complaint, asserts  
12 numerous affirmative defenses, and specifically denies that the Covered Products require a  
13 Proposition 65 warning or otherwise cause harm to any person.

14       **1.8**     The Parties enter into this Consent Judgment in order to settle, compromise and  
15 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent  
16 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any  
17 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
18 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,  
19 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
20 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
21 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent  
22 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties  
23 may have in any other or future legal proceeding unrelated to these proceedings. However,  
24 nothing in this Section shall affect the enforceability of this Consent Judgment.

25       **1.9**     The “Effective Date” of this Consent Judgment shall be the date this Consent  
26 Judgment is entered by the Court.

27 ///

28 **2. JURISDICTION AND VENUE**

1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
2 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that  
3 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment  
4 pursuant to the terms set forth herein.

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

#### 6 **3.1 Clear and Reasonable Warnings**

7 On and after the Effective Date of this Consent Judgment, BANYAN shall be  
8 permanently enjoined from Distributing into California, manufacturing for sale in California,  
9 and/or directly selling to a consumer in the State of California any Covered Product for which  
10 the maximum dose recommended on the label contains more than 0.5 micrograms (mcg) of lead,  
11 as calculated in accordance with the formula set forth in Section 3.7 and pursuant to the testing  
12 done in accordance with Section 3.9, unless BANYAN complies with at least one of the required  
13 warning methods set forth in Section 3.1 through Section 3.6. The term “Distributing into  
14 California” means to ship any of the Covered Products into California for sale in California, or to  
15 sell or provide any of the Covered Products to any person or entity that BANYAN knows will  
16 sell or intends to sell any of the Covered Products in California.

17 In all warning methods contained in Section 3.2 through Section 3.6 below, the Warning  
18 shall be provided with such conspicuousness, as compared with other words, statements, designs,  
19 or devices on the container, labeling, webpage, catalog page, invoice, insert, or in the store as to  
20 render it likely to be read and understood by an ordinary individual under customary conditions  
21 of purchase or use. In all warning methods, no other statements may accompany the Warning,  
22 except that BANYAN may refer consumers to a single website for further information. The  
23 Warning shall be at least the same size as the largest of any other health or safety warnings on  
24 the container, labeling, webpage, catalog page, invoice, or insert, as applicable, and the word  
25 “**WARNING**” shall be in all capital letters and in bold print. The Warning shall be contained in  
26 the same section of the container, labeling, webpage, catalog page, invoice, or insert, as  
27 applicable, which states other safety warnings concerning the use of the Covered Product.

#### 28 **3.2 The Warning Language.**

1 The warning language shall be one of the following:

2 **[California Proposition 65] WARNING [(California Proposition 65)]** This  
3 product contains [lead,] [a] chemical[s] known [to the State of California] to  
4 cause [cancer and] birth defects or other reproductive harm.

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

8 The text in brackets in the warnings above is optional. The words “cancer and” shall be included  
9 in the warning only if the maximum recommended dose stated on the Covered Product’s label  
10 contains more than 15 micrograms (mcg) of lead as calculated in accordance with the formula set  
11 forth in Section 3.7 below.

12 **3.3 Warning Method (On-Product Warning)**

13 For those Covered Products that are subject to the warning requirement of Section 3.1,  
14 BANYAN shall provide the Warning Language in Section 3.2 on the Covered Product. Unless  
15 the warning is provided pursuant to Sections 3.4 through 3.6, the warning above shall be  
16 permanently affixed to or printed on the labeling of each Covered Product with such  
17 conspicuousness as compared with other words, statements, designs, or devices on the labeling  
18 as to render it likely to be read and understood by an ordinary individual under customer  
19 conditions of purchase or use. In all warning methods, no other statements or comments  
20 regarding Proposition 65 or lead may accompany the Warning, except that Defendant may refer  
21 consumers to a single website for further information. The warning shall be at least the same size  
22 as the largest of any other health or safety warnings on the container or labeling, and the word  
23 “**WARNING**” shall be in all capital letters and in bold print. The warning shall be contained in  
24 the same section of the labeling that states other safety warnings concerning the use of the  
25 Covered Product.

26 **3.4 Warning Method (Store Warning)**

27 For sales in retail stores, the Warning shall be provided by either of the following  
28 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and

1 Reasonable Warnings in Retail Stores, below:

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

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

9 (i) Form of Sign. A Sign shall be rectangular and at least 5 inches x 7  
10 inches in size, with the word “WARNING” centered one-half of an inch from the top of the sign  
11 all in one-half inch capital letters. The Sign shall be substantially identical to the sign attached  
12 hereto as Exhibit E. For the body of the warning message, left and right margins of at least one-  
13 half of an inch, and a bottom margin of at least one-half inch shall be observed. The Symbol  
14 must be at least one inch high. Larger Signs shall bear substantially the same proportions of type  
15 size and spacing to sign dimension as a sign that is 5 inches x 7 inches in size. Unless modified  
16 by agreement of the Parties, the Sign shall contain one of the following text (text in brackets is  
17 optional, except as described in Section 3.2):

18 WARNING:  
19 CALIFORNIA PROPOSITION 65  
20 Products with the symbol  
21 *[Shown on Exhibit B]*  
22 contain [lead,] [a] chemical[s] known to the State of California to  
23 cause [cancer and] birth defects  
24 or other reproductive harm.

25 WARNING:  
26 CALIFORNIA PROPOSITION 65  
27 Products with the symbol  
28 *[Shown on Exhibit B]*  
contain [lead,] [a] substance [s] known to the State of California to  
cause [cancer and] birth defects  
or other reproductive harm.

(ii) Placement of Sign. Signs shall be placed in each California

1 establishment in which any of BANYAN's Covered Products that requires a warning are sold.  
2 Signs shall not be covered or obscured, and shall be placed and displayed in a manner rendering  
3 them likely to be read and understood by an ordinary individual prior to purchase. At least one  
4 Sign shall be posted in each aisle or on each shelf or display where the Covered Products for  
5 which the warning is being provided are offered or displayed for sale, unless the retail  
6 establishment has less than 7,500 square feet of retail space, in which case the Sign may be  
7 posted at each cash register. Additional signs shall be posted as are necessary to assure that any  
8 potential purchaser of Covered Products would be reasonably likely to see a Sign prior to  
9 purchase.

10 (iii) BANYAN shall provide an exemplar Sign to the central purchasing  
11 office for all distributors and retail establishments with whom BANYAN transacts business for  
12 sale of the Covered Products in California that require a warning. BANYAN shall provide Signs  
13 and instructions by letter ("Warning Instruction Letter," Exhibit C) to the central purchasing  
14 office of each distributor or retailer with whom BANYAN transacts business and that offers any  
15 of the Covered Products for sale in California retail stores, requiring such retailers to post the  
16 Signs as described in Section 3.4(1)(A)(ii) above. The Warning Instruction Letter shall request  
17 such retailers to respond with a written acknowledgement that the Signs will be posted within 30  
18 days of receipt of the Warning Instruction Letter. BANYAN shall send a follow-up  
19 communication ("Follow-Up Warning Instruction Letter," Exhibit D) to entities who were sent  
20 the original instructions and who did not return a timely acknowledgment. The Signs, Warning  
21 Instruction Letters, and Follow-Up Warning Instruction Letters shall be delivered in person or  
22 via a shipping method that is traceable to ensure retailers received the information. BANYAN  
23 shall maintain files demonstrating compliance with this provision, including the communications  
24 sent and receipts of any acknowledgments from retailers and distributors, which BANYAN shall  
25 provide to ERC upon written request. If BANYAN learns that any retailer offering any of the  
26 Covered Products for sale in any California retail store does not return an acknowledgement to  
27 the Warning Instruction Letter and Follow-Up Warning Instruction Letter within 30 days of  
28 receiving the Follow-Up Warning Instruction Letter, or a retailer or distributor is failing to post



1 or maintain the Sign in accordance with subsection (ii) above, then within 5 business days  
2 BANYAN shall stop providing Covered Products to such retailer, distributor, or other person  
3 until it verifies that compliance with the terms of subsection (ii) above is achieved.

4 (iv) If BANYAN complies with the terms of subsection (iii) above, it shall  
5 not be found to have violated this Consent Judgment where a retail store, distributor, or other  
6 person fails to post or maintain the Sign in accordance with this Consent Judgment.

7 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol shall be  
8 prominently displayed with such conspicuousness, as compared with other words, statements,  
9 designs, or devices used at the point the Covered Product is offered for sale, as to render the  
10 Symbol likely to be seen by an ordinary individual prior to purchase. The Symbol shall be  
11 permanently affixed to or printed on (at the point of manufacture, prior to shipment to California,  
12 or prior to distribution within California) the outside packaging or container of each unit of the  
13 Covered Product, in which case the Symbol must be at least as tall as the largest letter in any  
14 other health or safety warning on that product label. In no case shall the text “Prop 65” and “!”  
15 be less than one-quarter inch (0.25 inch) high.

16 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not using the  
17 Identifying Signs and Designated Symbol in Retail Stores system described above in Section  
18 3.4(1), the Warning set forth in Section 3.2 may be provided by signs placed and displayed in a  
19 manner rendering them likely to be read and understood by an ordinary individual prior to  
20 purchase. Signs containing the warning set forth in Section 3.2 shall be posted in each aisle or on  
21 each shelf or display where the Covered Products for which the warning is being provided are  
22 offered or displayed for sale, unless the retail establishment has less than 7,500 square feet of  
23 retail space, in which case the Sign may be posted at each cash register and shall not be  
24 obscured. Any sign pursuant to this subsection shall be substantially identical to the sign attached  
25 as Exhibit F (but names of Covered Products may change so as to list only those Covered  
26 Products which require a warning). The sign must be rectangular and at least 5 inches x 7 inches  
27 in size, with the word “WARNING” in bold and entered one-half of an inch from the top of the  
28 sign all in one-half inch capital letters. For the body of the warning message, left and right

1 margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be  
2 observed. Larger signs shall bear substantially the same proportions of type size and spacing to  
3 sign dimension as a sign that is 5 inches x 7 inches in size. Each sign shall name each Covered  
4 Product that requires the Warning pursuant to Section 3.1. If BANYAN warns under this Section  
5 3.4(1)(B)(2), for any retail store not operated by BANYAN, then BANYAN shall provide the  
6 sign to the retail store, send the Warning Instruction Letter, and comply with all other  
7 requirements under Section 3.4(1)(A)(iii) above.

### 8 **3.5 Warning Method No. 3 (Website Warning)**

9 The Warning stated in Section 3.2 shall be given in conjunction with all sales of the  
10 Covered Products via the Internet, and such Warning shall appear in at least one of the following  
11 ways: (a) on the same web page on which the Covered Product is displayed; (b) on the same web  
12 page as the order form for the Covered Product; (c) on the same page as the price for any  
13 Covered Product; (d) on one or more web pages displayed to a purchaser during the checkout  
14 process; (e) an “Insert Warning” as defined below; or (f) an “Invoice Warning” as defined below.  
15 The Warning stated in Section 3.2 shall be used and shall appear in any of the above instances  
16 adjacent to or immediately following the display, description, or price of the Covered Product for  
17 which it is given, in the same type size or larger than the text of the Covered Product’s  
18 description.

19 Insert Warning: Where the Covered Product is being shipped to a consumer in California  
20 and may be returned by the consumer for a full refund with no extra charge or shipping or  
21 handling fee, the warning stated in Section 3.2 may be displayed on the invoice or other package  
22 insert that accompanies each box of Covered Products going to a consumer in California. The  
23 insert warning shall be a minimum of 5 inches x 7 inches, shall name each Covered Product in  
24 the shipment that requires a Warning, and shall be substantially identical to the insert warning  
25 attached as Exhibit F (but the names of Covered Products may change so as to list only those  
26 Covered Products which require a Warning). The Insert Warning shall state the name(s) of the  
27 products subject to the Warning, or a list of all of the Covered Products. No other statements  
28 about Proposition 65 or lead may accompany the Warning on the invoice or other package insert,

1 except that BANYAN may refer consumers to a single website for further information. Any  
2 Warning printed on an invoice must be in a type size at least as tall as the largest letter in the  
3 name of the Covered Product printed on the invoice.

4 Invoice Warning: Where the Covered Product may be returned by the consumer for a full  
5 refund with no extra charge or shipping or handling fee, the Warning may alternatively be  
6 displayed on an invoice that accompanies the shipment of the Covered Product. The Warning  
7 shall be displayed with such conspicuousness, as compared with other words, statements,  
8 designs, or devices on the invoice, as to render it likely to be read and understood by an ordinary  
9 individual prior to use. The word “WARNING” shall be in all capital letters and in bold print.  
10 No other statements about Proposition 65 or lead may accompany the warning, except that  
11 BANYAN may refer consumers to a single website for further information. A Warning printed  
12 on an invoice must be in a type size that is 1) at least as tall as the largest letter or numeral in the  
13 name of the Covered Product printed on the invoice, or 2) at least as tall as the largest of any  
14 other health or safety warnings on the invoice, whichever is larger. The Invoice Warning shall be  
15 substantially identical to the invoice warning attached as Exhibit G.

### 16 **3.6 Warning Method No. 4 (Printed Catalog)**

17 For Covered Products sold to California consumers through a printed catalog, the  
18 Warning shall be prominently displayed on each catalog page that contains a description of the  
19 ingredients or attributes of the Covered Product. Where the Covered Product may be returned by  
20 the consumer for a full refund with no extra charge or shipping or handling fee, the Warning may  
21 alternatively be displayed on the invoice or other package insert as pursuant to Section 3.5.

### 22 **3.7 Calculation of Lead Levels**

23 As used in this Consent Judgment, lead levels are calculated pursuant to the testing  
24 protocol described in Section 3.9. For purposes of measuring the lead, the highest lead detection  
25 result of the three (3) randomly selected samples of the Covered Products will be controlling. For  
26 purposes of this Consent Judgment, daily lead exposure levels shall be measured in micrograms,  
27 and shall be calculated using the following formula: Micrograms of lead per gram of product,  
28 multiplied by grams per serving of the product (using the largest serving size appearing on the

1 Covered Product’s label), multiplied by servings of the product per day (using the largest number  
2 of servings in the recommended dosage appearing on the Covered Product’s label), which equals  
3 micrograms of lead exposure per day.

4 **3.8 Reformulated Covered Products**

5 A Reformulated Covered Product is one for which the maximum recommended daily  
6 serving on the label contains no more than 0.5 micrograms of lead per day.

7 **3.9 Testing and Quality Control Methodology**

8 (a) Beginning within one year of the Effective Date, BANYAN shall conduct testing  
9 of the Covered Products for lead content for a minimum of four (4) consecutive years, except  
10 that the testing requirement of this Consent Judgment does not apply to any of the Covered  
11 Products for which BANYAN has provided the warning specified in Section 3.2.

12 (b) All testing for lead required by this Consent Judgment shall be performed using  
13 Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) or any other testing method  
14 subsequently agreed to in writing by the Parties.

15 (c) All testing pursuant to this Consent Judgment shall be performed by an  
16 independent third-party laboratory certified by the California Environmental Laboratory  
17 Accreditation Program or a laboratory that is registered with the United States Food & Drug  
18 Administration.

19 (d) BANYAN shall test each of the Covered Products at least once a year for a  
20 minimum of four (4) consecutive years by testing three (3) randomly selected samples of each  
21 Covered Product (in the form intended for sale to the end-user) which BANYAN intends to sell  
22 or is manufacturing for sale in California, directly selling to a consumer in California, or  
23 Distributing into California. If tests conducted pursuant to this Section demonstrate that no  
24 warning is required for a Covered Product during each of four (4) consecutive years, then the  
25 testing requirements of this Section will no longer be required as to that Covered Product.  
26 However, if during or after the four (4) year period, BANYAN changes ingredient suppliers for  
27 any of the Covered Products and/or reformulates any of the Covered Products, BANYAN shall  
28 test that Covered Product annually for at least four (4) consecutive years after such change is

1 made.

2 (e) In lieu of the annual testing set forth in Section 3.9(d), at any time after January 1,  
3 2015, BANYAN may elect to test one randomly selected sample of each manufactured lot of the  
4 Covered Products (in the form intended for sale to the end-user) for lead content. The lead  
5 detection result of the randomly selected samples from each lot of the Covered Products tested  
6 pursuant this subsection will be controlling for each lot of the Covered Product tested. The  
7 randomly selected samples of each Covered Product tested pursuant to Section 3.8 shall be from  
8 those Covered Products which BANYAN intends to sell or is manufacturing for sale in  
9 California, directly selling to a consumer in California, or Distributing into California. If tests  
10 conducted pursuant to Section 3.8 demonstrate that no warning is required for a Covered Product  
11 during each of four (4) consecutive years, then the testing requirements of this Section 3.8 will  
12 no longer be required as to that Covered Product. However, if during or after the four (4) year  
13 period, BANYAN changes ingredient suppliers for any of the Covered Products and/or  
14 reformulates any of the Covered Products, BANYAN shall test that Covered Product as required  
15 by Section 3.8(d) or Section 3.8(e), as applicable, for at least four (4) consecutive years after  
16 such change is made.

17 (f) BANYAN shall retain all test results and documentation for a period of four (4)  
18 years from the date of each test. BANYAN shall arrange for the laboratory conducting the testing  
19 specified in Section 3.8(d) to send the test results to ERC within 10 days of conducting each test.  
20 For testing conducted pursuant to subsection 3.8(e), BANYAN shall send such test results to  
21 ERC on or before the yearly anniversary of the Effective Date for a period of four (4) years after  
22 the Effective Date.

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

26 (h) All testing pursuant to Section 3.8 that BANYAN releases to ERC shall be  
27 maintained confidentially by ERC and shall not be published, disseminated, or publically  
28 released by ERC, except as required by law.

1 **4. SETTLEMENT PAYMENT**

2 **4.1** BANYAN shall make a total payment of \$68,125.00 within 10 business days of  
3 the Effective Date. The payment will be sent to counsel for ERC, William F. Wraith, Wraith  
4 Law, 16485 Laguna Canyon Road, Suite 250, Irvine, California, 92618. The payment shall be  
5 issued as separate checks apportioned and payable as follows:

6 **4.2** \$6,344.00 as civil penalties pursuant to California Health and Safety Code Section  
7 25249.7(b)(1). Of this amount, \$4,758.00 shall be payable to the Office of Environmental Health  
8 Hazard Assessment (“OEHHA”), and \$1,586.00 shall be payable to ERC. (Cal. Health & Safety  
9 Code § 25249.12(c)(1) & (d)). ERC’s counsel will forward the civil penalty to OEHHA.

10 **4.3** \$22,585.82 payable to ERC as reimbursement to ERC for reasonable costs  
11 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in  
12 bringing this Action.

13 **4.4** \$19,032.68 payable to ERC in lieu of further civil penalties, for the day-to-day  
14 business activities such as (1) continued enforcement of Proposition 65, which includes work,  
15 analysis and testing of consumer products that may contain Proposition 65 chemicals, focusing  
16 on the same or similar type of ingestible products that are the subject matter of the current action;  
17 (2) the continued monitoring of past consent judgments and settlements to ensure companies are  
18 complying with Proposition 65; and (3) giving a donation of \$950.00 to the Woman’s Voices for  
19 The Earth to address reducing toxic chemical exposures in California.

20 **4.5** \$19,600.00 payable to William F. Wraith as reimbursement of ERC’s attorney’s  
21 fees and attorney’s costs.

22 **4.6** \$562.50 payable to Karen Evans as reimbursement of ERC’s attorney’s fees and  
23 attorney’s costs.

24 **4.7** BANYAN’s failure to remit payment before its due date shall be deemed a  
25 material breach of this Agreement.

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may be modified only by: (i) Written agreement and stipulation  
28 of the Parties and (ii) upon entry of a modified Consent Judgment by the Court. ERC is entitled

1 to reimbursement of all reasonable attorneys' fees and costs regarding any modification  
2 requested or initiated by BANYAN.

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

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
5 this Consent Judgment.

6 **6.2** In the event a dispute arises with respect to any Party's compliance with the  
7 terms and/or conditions of this Consent Judgment after its entry by the Court, the Party seeking  
8 compliance of another Party shall make a good faith attempt to resolve the dispute by conferring  
9 with the other Party in person, by telephone or by written communication before seeking relief  
10 from the Court. If the dispute is not resolved after such an attempt, this Consent Judgment may  
11 be enforced in this Court pursuant to Code of Civil Procedure § 664.4 or any other valid  
12 provision of the law. The prevailing party in any such dispute brought to this Court for  
13 resolution shall be awarded all reasonable costs and attorney's fees. As used in the preceding  
14 sentence, the term "prevailing party" means a party who is successful in obtaining relief more  
15 favorable to it than the relief the other party was agreeable to providing during the Parties' good  
16 faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

17 **7. APPLICATION OF CONSENT JUDGMENT**

18 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their  
19 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
20 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
21 wholesalers, retailers, predecessors, successors, and assigns.

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

23 **8.1** ERC on behalf of itself, its agents, officers, representatives, successors, and  
24 assigns, and in the public interest releases (a) BANYAN and its past and present parent  
25 companies, subsidiaries, affiliates, and divisions; (b) each of their respective licensors, licensees,  
26 franchisors, franchisees, joint venturers, partners, vendors, manufacturers, packagers,  
27 contractors, and finished product and ingredient suppliers; (c) each of their respective  
28 distributors, wholesalers, retailers, users, packagers and all other entities in the distribution chain

1 of the Covered Products; and (d) each of the respective officers, directors, shareholders,  
2 employees, and agents of the persons and entities described in (a) through (c) above (the persons  
3 and entities identified in (a), (b), (c), and (d), above, including the predecessors and assigns of  
4 any of them, are collectively referred to as “the Released Parties”) from all claims for violations  
5 of Proposition 65 up through the Effective Date based on exposure to lead from the Covered  
6 Products as set forth in the Notice of Violations and the Complaint. The Released Parties does  
7 not include private label customers of BANYAN.

8 **8.2** ERC, on behalf of itself only, hereby releases and discharges BANYAN from all  
9 known and unknown claims for alleged violations of Proposition 65 arising from or relating to  
10 alleged exposures to lead or lead compounds in the Covered Products as set forth in the Notice of  
11 Violations and the Complaint. It is possible that other claims not known to the Parties arising out  
12 of the facts alleged in the Notice of Violations or the Complaint and relating to lead in the  
13 Covered Products that were manufactured before the Effective Date will develop or be  
14 discovered. ERC, on behalf of itself only waives California Civil Code Section 1542, which  
15 reads as follows:

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

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

23 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to  
24 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to  
25 lead and lead compounds in the Covered Products as set forth in the Notice of Violations and the  
26 Complaint.

27 **8.4** ERC, on one hand, and BANYAN, on the other hand, each release and waive all  
28 claims they may have against each other and their respective officers, directors, employees,



1 agents, representatives, and attorneys for any statements or actions made or undertaken by them  
2 or their respective officers, directors, employees, agents, representatives, and attorneys in  
3 connection with the Notice of Violations or this Action.

4 **9. CONSTRUCTION AND SEVERABILITY**

5 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the  
6 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to  
7 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or  
8 construction of this Consent Judgment, the terms and conditions shall not be construed against  
9 any Party.

10 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court  
11 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
12 affected.

13 **9.3** The terms and conditions of this Consent Judgment shall be governed by and  
14 construed in accordance with the laws of the State of California.

15 **10. PROVISION OF NOTICE**

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

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

24 William F. Wraith, Esq.  
25 Wraith Law  
26 16485 Laguna Canyon Road, Suite 250  
27 Irvine, CA 92618

28 **For BANYAN TRADING, CO., BANYAN TRADING, LLC AND BANYAN  
BOTANICALS**

Monty Agarwal  
Arnold & Porter LLP

1 Three Embarcadero Center, 10th Floor  
2 San Francisco, CA 94111

3 Kevin J. Casey  
4 Banyan Botanicals  
5 624 "A" Street  
6 Ashland, OR 97520

## 7 **11. COURT APPROVAL**

8 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
9 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
10 Consent Judgment.

11 **11.2** If the California Attorney General objects to any term in this Consent Judgment,  
12 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
13 prior to the hearing on the motion.

14 **11.3** If this Stipulated Consent Judgment is not approved by the Court despite the  
15 Parties' best efforts, it shall be null and void and have no force or effect.

## 16 **12. EXECUTION AND COUNTERPARTS**

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

## 20 **13. ENTIRE AGREEMENT, AUTHORIZATION**

21 **13.1** This Consent Judgment contains the sole and entire agreement and understanding  
22 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
23 negotiations, commitments and understandings related hereto. No representations, oral or  
24 otherwise, express or implied, other than those contained herein have been made by any Party.  
25 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to  
26 exist or to bind any Party.

27 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
28 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
provided herein, each Party shall bear its own fees and costs.

1 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**


2 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.  
3 The Parties request the Court to fully review this Consent Judgment and, being fully informed  
4 regarding the matters which are the subject of this Action, to:

5 (a) Find that the terms and provisions of this Consent Judgment represent a good  
6 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been  
7 diligently prosecuted, and that the public interest is served by such settlement; and

8 (b) Make the findings pursuant to California Health and Safety Code section  
9 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

10 **IT IS SO STIPULATED:**

11 **ENVIRONMENTAL RESEARCH CENTER**

12   
13 \_\_\_\_\_  
14 Chris Hepinstall, Executive Director

Dated: 2/10/2014

15 **BANYAN TRADING, CO., BANYAN TRADING, LLC AND BANYAN BOTANICALS**

16 \_\_\_\_\_  
17 Kevin Casey

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

18 **APPROVED AS TO FORM:**

19 **WRAITH LAW**

20 \_\_\_\_\_  
21 William F. Wraith  
22 Counsel for Environmental Research Center

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

23 **ARNOLD & PORTER LLP**

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10 **IT IS SO STIPULATED:**

11 **ENVIRONMENTAL RESEARCH CENTER**

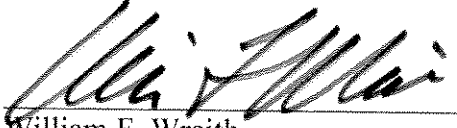
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13 \_\_\_\_\_ Dated: \_\_\_\_\_  
14 Chris Heptinstall, Executive Director

15 **BANYAN TRADING, CO., BANYAN TRADING, LLC AND BANYAN BOTANICALS**

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17 \_\_\_\_\_ Dated: \_\_\_\_\_  
18 Kevin Casey

19  
20 **APPROVED AS TO FORM:**

21 **WRAITH LAW**

22  
23   
24 \_\_\_\_\_ Dated: 2/12/2014  
25 William F. Wraith  
26 Counsel for Environmental Research Center

27 **ARNOLD & PORTER LLP**

28

1 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

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3 The Parties request the Court to fully review this Consent Judgment and, being fully informed  
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7 diligently prosecuted, and that the public interest is served by such settlement; and

8 (b) Make the findings pursuant to California Health and Safety Code section  
9 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

10 **IT IS SO STIPULATED:**

11 **ENVIRONMENTAL RESEARCH CENTER**

12  
13 \_\_\_\_\_ Dated: \_\_\_\_\_  
14 Chris Heptinstall, Executive Director

15 **BANYAN TRADING, CO., BANYAN TRADING, LLC AND BANYAN BOTANICALS**

16  
17  \_\_\_\_\_ Dated: 2/12/14  
18 Kevin Casey

19 **APPROVED AS TO FORM:**

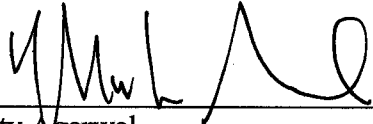
20 **WRAITH LAW**

21  
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23 \_\_\_\_\_ Dated: \_\_\_\_\_  
24 William F. Wraith  
25 Counsel for Environmental Research Center

26  
27 **ARNOLD & PORTER LLP**

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Monty Agarwal  
Counsel for Banyan Trading, Co., Banyan  
Trading, LLC and Banyan Botanicals

Dated: 2/12/14

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**ORDER AND 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: \_\_\_\_\_  
\_\_\_\_\_  
Judge, Superior Court of the State of California

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**EXHIBIT A: Notice of Violations**



# **WRAITH LAW**

16485 LAGUNA CANYON ROAD  
SUITE 250  
IRVINE, CALIFORNIA 92618  
Tel (949) 251-9977  
Fax (949) 251-9978

March 8, 2012

## **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ. (PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. 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.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter “the Violators”) are:

**Banyan Botanicals, Banyan Trading, Co. and Banyan Trading, LLC**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Banyan Botanicals Ayurvedic Herbs I Sleep Soundly - Lead  
Banyan Botanicals Ayurvedic Herbs Healthy Kapha - Lead  
Banyan Botanicals Ayurvedic Herbs Ashwagandha - Lead**

**Banyan Botanicals Ayurvedic Herbs Healthy Vata - Lead**  
**Banyan Botanicals Ayurvedic Herbs Haritaki - Lead**  
**Banyan Botanicals Ayurvedic Herbs Healthy Hair - Lead**  
**Banyan Botanicals Ayurvedic Herbs Blood Cleanse - Lead**  
**Banyan Botanicals Ayurvedic Herbs Healthy Pitta - Lead**  
**Banyan Botanicals Ayurvedic Herbs Heart Formula - Lead**  
**Banyan Botanicals Ayurvedic Herbs Kidney Formula - Lead**  
**Banyan Botanicals Ayurvedic Herbs Trim Support - Lead**  
**Banyan Botanicals Ayurvedic Herbs Men's Support - Lead**  
**Banyan Botanicals Ayurvedic Herbs Shatavari - Lead**  
**Banyan Botanicals Ayurvedic Herbs Vata Digest - Lead**  
**Banyan Botanicals Ayurvedic Herbs Immune Support - Lead**  
**Banyan Botanicals Ayurvedic Herbs Lung Formula - Lead**  
**Banyan Botanicals Ayurvedic Herbs Joint Support - Lead**  
**Banyan Botanicals Ayurvedic Herbs Mental Clarity - Lead**  
**Banyan Botanicals Ayurvedic Herbs Kapha Digest - Lead**  
**Banyan Botanicals Ayurvedic Herbs Liver Formula - Lead**  
**Banyan Botanicals Ayurvedic Herbs Tranquil Mind - Lead**  
**Banyan Botanicals Ayurvedic Herbs Gokshuradi Guggulu - Lead**  
**Banyan Botanicals Ayurvedic Herbs Kanchanar Guggulu - Lead**  
**Banyan Botanicals Ayurvedic Herbs Kaishore Guggulu - Lead**  
**Banyan Botanicals Ayurvedic Herbs Stress Ease - Lead**  
**Banyan Botanicals Ayurvedic Herbs Sweet Ease - Lead**  
**Banyan Botanicals Ayurvedic Herbs Women's Support - Lead**  
**Banyan Botanicals Ayurvedic Herbs Para Cleanse - Lead**  
**Banyan Botanicals Ayurvedic Herbs Pitta Digest - Lead**  
**Banyan Botanicals Ayurvedic Herbs Neem - Lead**  
**Banyan Botanicals Ayurvedic Herbs Triphala - 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 and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

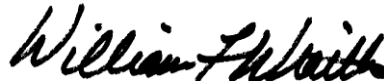
**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 8, 2009, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are

provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. 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 label. The Violators violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Banyan Botanicals, Banyan Trading, Co. and Banyan Trading, LLC and its Registered Agent for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Banyan Botanicals, Banyan Trading, Co. and Banyan Trading, LLC**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

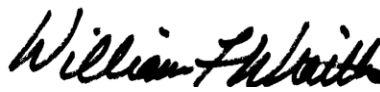
2. I am an attorney for the noticing party.

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 chemicals that are 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 8, 2012



---

William F. Wraith

**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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 8, 2012, 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 with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Banyan Botanicals  
14316 Mel Smith Court, NE  
Albuquerque, NM 87123

Current CEO or President  
Banyan Trading, LLC  
6705 Eagle Rock Avenue, NE  
Albuquerque, NM 87113

(Banyan Botanicals’ Registered  
Agent for Service of Process)  
6705 Eagle Rock Avenue, NE,  
Albuquerque, NM 87113

Current CEO or President  
Banyan Botanicals  
624 A Street  
Ashland, OR 97520

Current CEO or President  
Banyan Trading, LLC  
1709 Ridgecrest Drive, SE  
Albuquerque, NM 87108

Kevin J. Casey  
(Banyan Trading, LLC  
Registered Agent for Service of  
Process)  
1709 Ridgecrest Drive, SE  
Albuquerque, NM 87108

Current CEO or President  
Banyan Botanicals  
6705 Eagle Rock Avenue, NE,  
Albuquerque, NM 87113

Current CEO or President  
Banyan Trading, Co.  
6705 Eagle Rock Avenue, NE  
Albuquerque, NM 87113

Kevin J. Casey  
Banyan Trading, Co.  
6705 Eagle Rock Avenue, NE  
Albuquerque, NM 87113

On March 8, 2012, 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 with the postage fully prepaid 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

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

March 8, 2012

Page 6

On March 8, 2012, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on March 8, 2012, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Amber Schaub", written over a horizontal line.

Amber Schaub

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

March 8, 2012

Page 7

**Service List**

District Attorney, Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Room 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Room 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009
District Attorney, Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County Post Office Box 990 Stockton, CA 95201	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm 800 Los Angeles, CA 90012
District Attorney, Colusa County 547 Market Street Colusa, CA 95932	District Attorney, Merced County 2222 M Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco City Attorney's Office City Hall, Room 234 1 Drive Carlton B Goodlett Place San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street Eureka, CA 95501	District Attorney, Orange County 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95353	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Avenue, Room 224 Visalia, CA 93291	

**EXHIBIT B: Warning Symbol**



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**EXHIBIT C: Letter to Retailers and Distributors**  
(For use if BANYAN provides warning signs pursuant to Section 3.3)

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

BANYAN has entered into a Consent Judgment with Environmental Research Center, Inc. regarding the presence of lead in specified dietary supplements sold in California, including those sold by its franchisees at retail locations in California.

Under the terms of this Consent Judgment, BANYAN is providing the enclosed warning sign to you so that they can be posted in retail stores. The signs must be posted in close proximity to each respective product that is expressly identified on the sign, such that the consumer, under customary conditions of purchase, could reasonably determine that the warning relates to the specific products listed. No other statements about Proposition 65 or lead may accompany the warning. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers prior to purchasing the products. For example, a warning sign placed in the aisle or shelf or display where the product is offered or displayed for sale would be in close proximity to the product.

Please sign and return the written acknowledgment below within 30 days of receiving this letter to acknowledge that you have received the warnings and that you will use them in accordance with these specifications until you receive written instruction from BANYAN to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate warning locations in the store, please contact [Contact Information].

Acknowledged by:

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

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

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

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



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**WARNING**  
**(California Proposition 65)**  
Products with the symbol



contain a substance  
known to the State of California  
to cause cancer and birth defects or other  
reproductive harm.

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3 **WARNING**

4

5 **(California Proposition 65)**

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8 These products contain a substance

9 known to the State of California

10 to cause cancer and birth defects or other

11 reproductive harm.

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13 [List of Products, if required by Section 3.4]

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16 [For more information, please visit [insert URL]]

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**EXHIBIT G: Exemplar Section 3.4 Invoice Warning**

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

**OR**

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