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10 Attorneys for Plaintiff
11 ENVIRONMENTAL RESEARCH CENTER

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13 McKENNA LONG & ALDRIDGE LLP
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15 Los Angeles, CA 90071-3124
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19 Attorneys for Defendant
20 YERBA PRIMA, INC.

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF ALAMEDA**

23 ENVIRONMENTAL RESEARCH CENTER,)
24 a non-profit California corporation,)

25 Plaintiff,)

26 v.)

27 YERBA PRIMA, INC., an Oregon)
28 Corporation,)

29 Defendant.)

Case No. RG12649221

[PROPOSED] STIPULATED CONSENT

JUDGMENT

Assigned for All Purposes to
Hon. Wynne Carvill

Dept: 21

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

2 **WHEREAS:**

3 A. ENVIRONMENTAL RESEARCH CENTER (“**ERC**” or “**Plaintiff**”) is a citizen
4 enforcer of California Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”) and is a non-
5 profit corporation organized under California’s Non-Profit Public Benefit Corporation Law.

6 B. YERBA PRIMA, INC. (“**Yerba Prima**” or “**Defendant**”), is an Oregon
7 Corporation. “**Parties**” means ERC and Yerba Prima only.

8 C. The name of the Products covered under this Consent Judgment are set forth in
9 **Exhibit A**, attached hereto (“**Covered Products**”).

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

12 E. On October 1, 1992, the State of California listed the chemicals lead and lead
13 compounds as chemicals known to cause cancer, pursuant to California Health and Safety Code
14 § 25249.8.

15 F. ERC alleges that the Covered Products have been sold by Yerba Prima in
16 California since May 9, 2009.

17 G. On May 9, 2012 ERC served Yerba Prima and public enforcement agencies with a
18 document entitled “60-Day Notice” that provided Yerba Prima and the public enforcement
19 agencies with notice alleging that Yerba Prima was in violation of Proposition 65 for failing to
20 warn purchasers and individuals using the Covered Products that such use exposes them to lead,
21 a chemical known to the State of California to cause cancer and/or reproductive toxicity
22 (“**Proposition 65 Notice**”). A copy of the Proposition 65 Notice is attached hereto as **Exhibit B**.

23 H. On September 24, 2012, ERC filed a complaint against Yerba Prima in the
24 Alameda County Superior Court against Yerba Prima (the “**Action**”), alleging violations of
25 Proposition 65, based on the Proposition 65 Notice. The Action was brought by ERC in the
26 public interest at least sixty (60) days after ERC provided notice of the alleged Proposition 65
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1 violations to Yerba Prima and the public enforcement agencies and none of the public
2 enforcement agencies had commenced and/or begun diligently prosecuting an action against
3 Yerba Prima for such violations.

4 I. For purposes of this Consent Judgment only, the Parties stipulate that this Court
5 has jurisdiction over Yerba Prima as to the allegations contained in the Complaint, that venue is
6 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
7 provisions of this Consent Judgment. This Consent Judgment shall have no application or effect
8 on Yerba Prima for Covered Products or other products manufactured, distributed or sold by
9 Yerba Prima to consumers outside of the State of California only.

10 J. Yerba Prima denies the material, factual and legal allegations contained in
11 Plaintiff's Complaint and maintains that all Covered Products that the company sold and
12 distributed in California have been and are in compliance with all laws, including Proposition 65.
13 The Parties enter into this Consent Judgment pursuant to a settlement of disputed claims between
14 them as alleged in the Complaint for the purposes of avoiding prolonged and costly litigation.
15 By execution of this Consent Judgment, Yerba Prima does not admit any facts or conclusions of
16 law suggesting or demonstrating any violations or the applicability of Proposition 65, or any
17 other statutory, common law or equitable requirements relating to the Covered Products.
18 Nothing in this Consent Judgment shall be construed as an admission by Defendant or Plaintiff
19 of any fact, issue of law, or violation of law, nor shall compliance with this Consent Judgment
20 constitute or be construed as an admission by Defendant or Plaintiff of any fact, issue of law, or
21 violation of law.

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

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

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

4 1. **Injunctive Relief.** Thirty (30) days after the Effective Date of this Consent
5 Judgment, Defendant shall not distribute into the State of California, or directly sell in the State
6 of California any Covered Product for which the maximum dose recommended on the label
7 contains more than 0.5 micrograms (**mcg**) of lead, unless each individual Covered Product (in
8 the form intended for sale to the end-user) bears one of the warning statements specified below
9 on its individual unit label or unit packaging.

10
11 2. Thirty (30) days after the Effective Date of this Consent Judgment, for Covered
12 Products that cause exposures in excess of that permitted by Paragraph 1, unless Defendant can
13 prove that the excess exposure is caused solely by “naturally occurring” lead at the “lowest level
14 currently feasible,” as set forth in 27 California Code of Regulations § 25501(a), Defendant
15 shall, at the point of manufacture, prior to shipment to California, or prior to distribution within
16 California, affix to or print on the Covered Product container, cap, label, or unit package the
17 following warning (the language in brackets in the warning below is optional):

18 **[CALIFORNIA Residents Only: Proposition 65] WARNING: This product contains**
19 **a chemical known to the State of California to cause cancer, birth defects, or other**
20 **reproductive harm.**

21
22 The term “cancer” shall be included in the warning only if there is an exposure to a daily dose of
23 more than 15 micrograms of lead when taken as the maximum dose directed on the Covered
24 Product’s label and as defined by the quality control methodology set forth in Paragraph 4 below.

25 3. The warning required by Paragraph 2 above shall be prominently affixed to or
26 printed on the labeling of each Covered Product intended for sale to a purchaser in the State of
27 California, with such conspicuousness, as compared with other words, statements, designs, or
28 devices on the labeling as to render it likely to be read and understood by an ordinary individual

1 under customary conditions of purchase or use. The warning shall not exceed the language
2 specified in Paragraph 2 (including the language designated as “optional”) above, and shall not
3 be accompanied by an explanation of Proposition 65 or the “naturally occurring” exemption. If
4 the warning is displayed on the Covered Product container or labeling, the warning shall be at
5 least the same size as the largest of any other health or safety warnings on the container or
6 labeling, and the word “**WARNING**” shall be in all capital letters and in bold print. If printed on
7 the labeling itself, the warning shall be contained in the same section of the labeling that states
8 other safety warnings concerning the use of the Covered Product. The requirement for Covered
9 Product labeling set forth herein is imposed pursuant to the terms of this Consent Judgment and
10 is recognized by the Parties as not being the exclusive method of providing a warning for the
11 Covered Products under Proposition 65 and its implementing regulations.
12

13 4. The injunctive relief set forth in Paragraphs 1, 2 and 3 above shall not apply to any
14 of the Covered Products that Yerba Prima put into the stream of commerce before 30 days after
15 the Effective Date.

16 5. Yerba Prima may reformulate the Covered Products to reduce the lead content to
17 below levels requiring a Proposition 65 warning, in which case the Parties agree that the Covered
18 Products may be offered for sale in California without the warnings discussed in this Consent
19 Judgment. If Yerba Prima contends that a Covered Product has been so reformulated, then at
20 least once each year, Yerba Prima shall undertake testing of any reformulated Covered Product
21 on which it does not intend to place a warning label discussed in Paragraph 2 above. Yerba
22 Prima (itself or through another) shall test at least five (5) randomly-selected samples of each
23 such reformulated Covered Product for lead content, to confirm whether the daily dose is more
24 or less than 0.5 micrograms of lead when taken as directed on the reformulated Covered
25 Product’s label. For purposes of determining whether a warning, if any, is required pursuant to
26 Paragraph 1, the highest lead detection result of the five (5) randomly selected samples of the
27 reformulated Covered Product will be controlling. For purposes of this Consent Judgment, daily
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1 lead exposure levels shall be measured in micrograms and shall be calculated using the following
2 formula: micrograms of lead per gram of product, multiplied by grams of product per serving of
3 the product (using the largest serving size appearing on the product label), multiplied by servings
4 of the product per day (using the largest number of servings in a recommended dosage appearing
5 on the product label), which equals micrograms of lead exposure per day. All testing pursuant to
6 this Consent Judgment shall be performed by a laboratory certified by the California
7 Environmental Laboratory Accreditation Program for the analysis of heavy metals or a
8 laboratory that is approved by, accredited by, or registered with the United States Food & Drug
9 Administration for the analysis of heavy metals. The method of selecting samples for testing
10 must comply with the regulations of the Food and Drug Administration as set forth in Title 21,
11 Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for
12 lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and
13 closed-vessel, microwave-assisted digestion employing high-purity reagents¹ or any other testing
14 method agreed upon in writing by the Parties. Nothing in this Consent Judgment shall limit
15 Yerba Prima's ability to conduct, or require that others conduct, additional testing of the Covered
16 Products, reformulated or otherwise, including the raw materials used in their manufacture. This
17 Consent Judgment, including the testing and sampling methodology set forth in this paragraph, is
18 the result of negotiation and compromise, and is accepted by the Parties for purposes of settling,
19 compromising, and resolving issues disputed in the Action, including future compliance by
20 Yerba Prima with this Consent Judgment, and shall not be used for any other purpose, or in any
21 other matter and, except for the purpose of determining future compliance with this Consent
22 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed
23 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g). For
24 the first two (2) years from the date of this Consent Judgment, Yerba Prima shall provide test
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28 ¹ See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and Children's Vitamins, J. Agric. Food Chem. 2008, 56, 6892-96.

1 results and documentation for any reformulated Covered Product to ERC within thirty (30)
2 working days of Yerba Prima's receipt of the test results; thereafter upon written request from
3 ERC, and shall retain all test results and documentation for a period of four (4) years from the
4 date of each test.

5 6. The requirements set forth above will only apply to any time during which Yerba
6 Prima is a "person in the course of doing business," as that term is defined in Health and Safety
7 Code § 25249.11(b).

8 7. Yerba Prima within thirty (30) days of the Effective Date will instruct all of its
9 customer service personnel responding to consumer inquiries by phone, e-mail or other
10 correspondence to instruct consumers not to consume more than the recommended daily dose on
11 the label for Covered Products.

12 8. **Civil Penalty Assessment.** Defendant agrees to pay a civil penalty in the amount
13 of \$5,940.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff shall remit 75% of this
14 amount (\$4,455.00) to the State of California pursuant to Health & Safety Code §25192, and
15 Plaintiff shall retain the remaining 25% of this amount (\$1,485.00).

16 9. **Payment In Lieu of Further Civil Penalties.** Defendant agrees to make an
17 additional payment in lieu of further civil penalties in the amount of \$17,822.00 to ERC for
18 projects to reduce exposures to toxic chemicals, and to increase consumer, worker and
19 community awareness of the health hazards posed by toxic chemicals.

20 10. **Reimbursement of Plaintiff's Fees and Costs.** Defendant agrees to reimburse
21 Plaintiff's reasonable investigative, expert and attorneys' fees and costs incurred as a result of
22 investigating and prosecuting this Action, negotiating a settlement in the public interest, and
23 obtaining required approval from the Office the California Attorney General and the Superior
24 Court. Such fees and costs total \$48,738.00.

25 11. **Payments.** Pursuant to Paragraphs 8, 9 and 10 herein, Defendant agrees to remit
26 the total amount of \$72,500.00 (seventy-two thousand five hundred dollars) to Plaintiff, by check
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1 or money order payable to: the "Lozeau Drury LLP Client Trust Account" and remitted to the
2 Law Office of Lozeau Drury LLP at the law firm's address noted in the Notice provision below.
3 Defendant shall remit payment in full within thirty (30) calendar days of the Effective Date.

4 **12. Plaintiff's Release of Defendant; Includes a "Downstream Release."** Plaintiff,
5 acting in its individual capacity on behalf of itself and acting in its representative capacity on
6 behalf of the general public, permanently and fully releases Yerba Prima, its parents,
7 subsidiaries, affiliates (including those companies that are under common ownership and/or
8 common control), shareholders, directors, members, officers, employees, and attorneys, and each
9 entity to whom each of them directly or indirectly distributed or sold the Covered Products,
10 including, but not limited to distributors, wholesalers, customers, retailers, franchisees, and any
11 other person or entity in the course of doing business who distributed, marketed or sold the
12 Covered Products, and excluding Yerba Prima's private label customers, from all claims of any
13 nature asserted in the Proposition 65 Notice.

14 **13. Limits of Release.** Nothing in this release is intended to apply to any
15 occupational or environmental exposures arising under Proposition 65 nor shall it apply to any of
16 Defendant's products not set forth on Exhibit A to this Consent Judgment.

17 **14. Release of Environmental Research Center.** Defendant, by this Consent
18 Judgment, waives all rights to institute any form of legal action against ERC for actions or
19 statements made or undertaken by ERC in the course of seeking enforcement of Proposition 65
20 against Defendant by means of the Proposition 65 Notice.

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

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

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

22 18. **Governing Law.** The terms of this Consent Judgment shall be governed by the
23 laws of the State of California.

24 19. **Notices.** All correspondence and notices required to be provided under this
25 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail
26 addressed as follows. All correspondence to ERC shall be mailed to:
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1 Richard Drury
2 Lozeau Drury LLP
3 410 12th Street, Suite 250
4 Oakland, CA 94607
5 Ph: (510) 836-4200
6 Fax: (510) 836-4205
7 Email: Richard@lozeaudrury.com

8 All correspondence to Yerba Prima shall be mailed to:

9 Robert S. Schuda
10 McKenna Long & Aldridge LLP
11 300 South Grand Avenue 14th Floor
12 Los Angeles, CA 90071-3124
13 Ph: (213) 688-1000
14 Fax: (213) 243-6330
15 Email: rschuda@mckennalong.com

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

21 21. **Counterparts.** This Consent Judgment may be executed in counterparts, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one
23 and the same document. Execution and delivery of this Agreement by facsimile transmission or
24 other electronic means shall constitute legal and binding execution and delivery. Photocopies of
25 the executed Agreement shall have the same force and effect as an Agreement bearing original
26 signatures.

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

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APPROVED AS TO FORM:

DATED: _____ By: _____
Richard Drury, Lozeau Drury LLP
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By: _____
Robert S. Schuda, McKenna Long & Aldridge LLP
Counsel for YERBA PRIMA, INC.

APPROVED AS TO SUBSTANCE:

DATED: _____ By: _____
Chris Heptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By: _____
_____, CEO
YERBA PRIMA, INC.

IT IS SO ORDERED

Dated: _____

Hon. Wynne Carvill, Judge of the Superior Court


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APPROVED AS TO FORM:

DATED: _____ By: _____

Richard Drury, Lozeau Drury LLP
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: April 8, 2013 By: _____

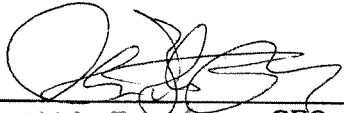

Robert S. Schuda, McKenna Long & Aldridge LLP
Counsel for YERBA PRIMA, INC.

APPROVED AS TO SUBSTANCE:

DATED: _____ By: _____

Chris Heptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: April 11, 2013 By: _____


JOHN JUNG, CEO
YERBA PRIMA, INC.

IT IS SO ORDERED

Dated: _____

Hon. Wynne Carvill, Judge of the Superior Court

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APPROVED AS TO FORM:

DATED: Mar. 25, 2013 By:



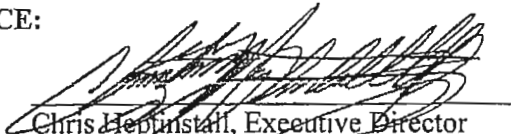
Richard Drury, Lozeau Drury LLP
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By:

Robert S. Schuda, McKenna Long & Aldridge LLP
Counsel for YERBA PRIMA, INC.

APPROVED AS TO SUBSTANCE:

DATED: 3/25/2013 By:



Chris Heptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By:

_____, CEO
YERBA PRIMA, INC.

IT IS SO ORDERED

Dated: _____

Hon. Wynne Carvill, Judge of the Superior Court

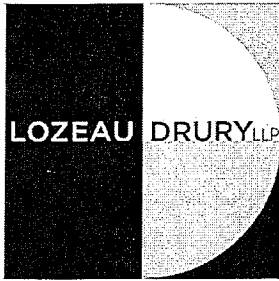
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EXHIBIT A
Product List

- Yerba Prima Great Plains Bentonite Detox**
- Yerba Prima Kalenite Cleansing Herbs**
- Yerba Prima Inc. Herbal Guard**
- Yerba Prima Inc. Daily Fiber Caps**
- Yerba Prima Inc. Colon Care**
- Yerba Prima Inc. Fiber Plus Caps**
- Yerba Prima Inc. Daily Fiber Formula Orange Flavor**
- Yerba Prima Colon Care Formula**
- Yerba Prima Fiber Plus Apple Spice Flavor**
- Yerba Prima Daily Fiber Formula**
- Yerba Prima Inc. Men's Rebuild**
- Yerba Prima Inc. Soluble Fiber Caps**
- Yerba Prima Inc. Psyllium Husks Caps**
- Yerba Prima Inc. Psyllium Husks Veg Caps**
- Yerba Prima Inc. Psyllium Husks Powder**
- Yerba Prima Inc. Soluble Fiber Formula**
- Yerba Prima Inc. Psyllium Whole Husks**

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EXHIBIT B
Prop. 65 Notice of Violation



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Yerba Prima, Inc.
740 Jefferson Ave.
Ashland, OR 97520

Jerry A. Jacobson
(Yerba Prima, Inc.'s
Registered Agent for Service of Process)
2 North Oakdale Ave.
Medford, OR 97501

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

VIA PRIORITY MAIL

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

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

Dear Addressees:

I 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 name of the Company covered by this notice that violated Proposition 65 (hereinafter "the Violators") is:

Yerba Prima, Inc.

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

Yerba Prima Great Plains Bentonite Detox - Lead
Yerba Prima Kalenite Cleansing Herbs - Lead
Yerba Prima Inc. Herbal Guard - Lead
Yerba Prima Inc. Daily Fiber Caps - Lead
Yerba Prima Inc. Colon Care - Lead
Yerba Prima Inc. Fiber Plus Caps - Lead
Yerba Prima Inc. Daily Fiber Formula Orange Flavor - Lead
Yerba Prima Colon Care Formula - Lead
Yerba Prima Fiber Plus Apple Spice Flavor - Lead
Yerba Prima Daily Fiber Formula - Lead
Yerba Prima Inc. Men's Rebuild - Lead
Yerba Prima Inc. Soluble Fiber Caps - Lead
Yerba Prima Inc. Psyllium Husks Caps - Lead
Yerba Prima Inc. Psyllium Husks Veg Caps - Lead
Yerba Prima Inc. Psyllium Husks Powder - Lead
Yerba Prima Inc. Soluble Fiber Formula - Lead
Yerba Prima Inc. Psyllium Whole Husks - 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.

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 consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. 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 and/or handling these products that they are being exposed to the identified chemicals. Each of these

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

May 9, 2012

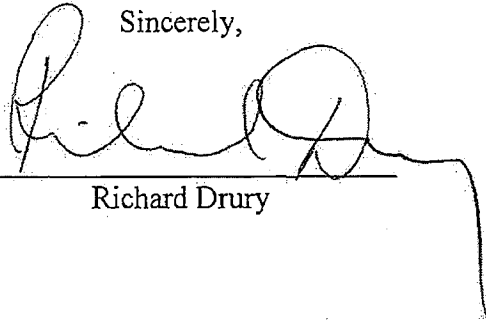
Page 3

ongoing violations has occurred on every day since May 9, 2009, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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 Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Drury", is written over a horizontal line. A long, thin vertical line extends downwards from the right end of the signature.

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

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

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

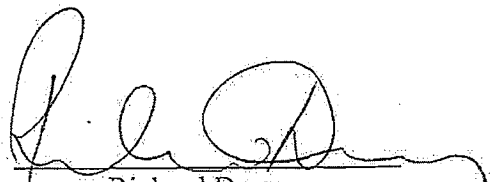
CERTIFICATE OF MERIT

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

I, Richard Drury, 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: May 9, 2012


Richard Drury

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 May 9, 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
Yerba Prima, Inc.
740 Jefferson Ave.
Ashland, OR 97520

Jerry A. Jacobson
(Yerba Prima, Inc.'s
Registered Agent for Service of Process)
2 North Oakdale Ave.
Medford, OR 97501

On May 9, 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

On May 9, 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 May 9, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

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

May 9, 2012

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Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Los Angeles County
210 West Temple Street, Suite 1800
Los Angeles, CA 90012

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

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

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

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

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

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

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

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

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

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

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

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

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

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

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

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

District Attorney, San Francisco County
850 Bryant Street, Room 322
San Francisco, CA 94103

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

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

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

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

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

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

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

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

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

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

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113