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4

5 Attorney for Plaintiff
Environmental Research Center

6 Carol R. Brophy (SBN 155767)
Kelly Savage Day (SBN 235901)
7 Sedgwick LLP
333 Bush Street, 30th Floor
8 San Francisco, CA 94101-2834
T: (415) 781-7900
9 F: (415) 781-2635

10 Attorneys for Defendants
Aloe Vera of America, Inc.,
11 Forever Living Products International, LLC,
Forever Living Products U.S., Inc.,
12 Forever Living.com, L.L.C., and
Forever Living Products, L.L.C.
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 ENVIRONMENTAL RESEARCH
17 CENTER, a California non-profit
corporation,
18

19 Plaintiff,

20 v.

21 ALOE VERA OF AMERICA, INC.;
22 FOREVER LIVING PRODUCTS
INTERNATIONAL, LLC; FOREVER
23 LIVING PRODUCTS U.S., INC.;
FOREVER LIVING.COM, L.L.C.;
24 FOREVER LIVING PRODUCTS, L.L.C.;
25 and DOES 1-50, inclusive,

26 Defendants.
27

Case No. CGC-13-529243

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1 On March 5, 2013, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
4 Complaint for Injunctive Relief and Civil Penalties under to the provisions of California’s Safe
5 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §
6 25249.5, *et seq.* (also known as and hereinafter referred to as “Proposition 65”), against
7 Defendants Aloe Vera of America, Inc. and Forever Living.com, L.L.C.¹ In this action, ERC
8 claims that certain products manufactured, distributed, and/or sold by the Defendants contain
9 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
10 consumers to levels of lead requiring Proposition 65 warnings. ERC, Aloe Vera of America,
11 Inc., and Forever Living.com, L.L.C. are hereinafter sometimes referred to individually as a
12 “Party” or collectively as the “Parties”. Defendants Aloe Vera of America, Inc. and Forever
13 Living.com, L.L.C. are hereinafter sometimes referred to collectively as “Aloe Vera”.

14 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
15 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
16 and toxic chemicals, facilitating a safe environment for consumers and employees, and
17 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling
18 this case in the public interest.

19 1.3 Aloe Vera of America, Inc. is a Texas corporation, and Forever Living.com,
20 L.L.C. is an Arizona limited liability company, and at all times relevant to this action, each has
21 employed ten or more persons and is a “person in the course of doing business” within the
22 meaning of Proposition 65.

23 1.4 The Complaint is based on allegations in a Notice of Violations of Proposition 65
24 (“Notice of Violations”), dated May 9, 2012, and served on the California Attorney General,
25 other public enforcers and Aloe Vera. A true and correct copy of the Notice of Violations is
26 attached hereto as Exhibit A. The following three products were identified in that Notice of

27 ¹ Defendants Forever Living Products International, LLC, Forever Living Products U.S., Inc., and Forever Living
28 Products, L.L.C. were dismissed from this action after the complaint was filed, leaving Defendants Aloe Vera of
America, Inc. and Forever Living.com, L.L.C. as the only two remaining named defendants.

1 Violations:

- 2 a. Forever Living Products Sonya 308 Natural Aloe Mineral Makeup.
3 b. Forever Living Products Sonya 309 Amber Aloe Mineral Makeup.
4 c. Forever Living Products Sonya 310 Caramel Aloe Mineral Makeup.²

5 (These three listed makeup products are hereinafter referred to collectively as the "Covered
6 Products" and in the singular as a "Covered Product.) Over 60 days have passed since the Notice
7 of Violations was served and no public enforcement entity has filed a complaint against Aloe
8 Vera regarding the Covered Products or the alleged violations.

9 1.5 ERC's Notice of Violations and the Complaint allege Aloe Vera has exposed and
10 continues to expose persons in California who use and or handle the Covered Products to the
11 chemical lead in excess of the exposure levels allowed under Proposition 65 without Aloe Vera
12 first providing clear and reasonable warnings, in violation of California Health and Safety Code
13 § 25249.6. Aloe Vera denies all material allegations in the Notice of Violations and Complaint,
14 asserts numerous affirmative defenses to the allegations of violations, and specifically denies the
15 Covered Products required a Proposition 65 warning or otherwise cause harm to any person.

16 1.6 The Parties have entered into this Consent Judgment to settle, compromise and
17 resolve disputed claims and avoid prolonged and costly litigation regarding the Covered
18 Products.

19 1.7 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
20 shall constitute or be construed as an admission by any of the Parties of any fact, issue of law, or
21 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
22 construed as giving rise to any presumption or inference of admission or concession or waiver of
23 any defense by Aloe Vera as to any fault, wrongdoing or liability, including without limitation,
24 any alleged violation of Proposition 65.

25 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall

26 _____
27 ² Two additional products were identified in the Notice of Violations and the Complaint: (1) Aloe Vera of America
28 Inc. Forever Living Products Forever Lite Ultra with Aminotein Vanilla Shake Mix, and (2) Aloe Vera of America
Inc. Forever Living Products Forever Lean. However, this Consent Judgment does not apply to these two additional
products.

1 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or
2 future legal proceeding unrelated to these proceedings. This paragraph shall not diminish or
3 otherwise affect the obligations, responsibilities, and duties of any Party regarding this Consent
4 Judgment.

5 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent
6 Judgment is entered by the Court.

7 1.10 The only products covered by this Consent Judgment are the Covered Products,
8 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
9 Covered Products only. This Consent Judgment shall not act as a dismissal of this action or
10 affect the continuation of this action regarding any products other than the Covered Products.

11 **2. JURISDICTION AND VENUE**

12 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties as to
14 the acts alleged in the Notice of Violations and Complaint, that venue is proper in this Court, and
15 that this Court has jurisdiction to enter this Consent Judgment pursuant to the terms set forth
16 herein.

17 **3. INJUNCTIVE RELIEF**

18 3.1 On and after the Effective Date, Aloe Vera shall be permanently enjoined from
19 manufacturing for sale in California, "Distributing into California," or directly selling to any
20 consumer located in California any Covered Product, unless such Covered Product complies
21 with the warning requirement set forth in Section 3.2 below. The term "Distributing into
22 California," as used herein, means to ship any of the Covered Products into California for sale in
23 California or to sell or provide any of the Covered Products to any person or entity Aloe Vera
24 knows intends to or will ship any of the Covered Products into or sell any of the Covered
25 Products in California.

26 3.2 For Covered Products that are subject to the warning requirement of Section 3.1,
27 Aloe Vera shall provide the following warning as specified below:
28

1 **4.2 Civil Penalty**

2 As a portion of the Total Settlement Amount, \$12,500 shall be considered a civil penalty
3 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$9,375)
4 of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for
5 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
6 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to
7 Defendant's counsel. ERC will retain the remaining 25% (\$3,125) of the civil penalty.

8 **4.3 Reimbursement of Expenses and Costs**

9 As a portion of the Total Settlement Amount, \$450 shall be considered a reimbursement
10 to ERC for its initial filing fee in this action.

11 **4.4 Attorney Fees**

12 As a portion of the Total Settlement Amount, \$12,500 shall be considered a payment to
13 ERC for its attorneys' fees of Philip T. Emmons.

14 **5. COSTS AND FEES**

15 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
16 fees, costs and expenses in this action up to the Effective Date only. This Consent Judgment
17 does not apply to any attorneys' fees, costs, or expenses incurred in this action after the Effective
18 Date regarding any products other than the Covered Products (see Footnote 2 above).

19 **6. RELEASE**

20 **6.1** ERC, acting on its own behalf and in the public interest, releases Aloe Vera and
21 their officers, directors, shareholders, employees, agents, representatives, parent companies,
22 subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and
23 attorneys, and suppliers, manufacturers, distributors, wholesalers, retailers and all other entities
24 in the distribution chain of the Covered Products from all claims for violations of Proposition 65
25 up through the Effective Date based on exposure to lead from the Covered Products as set forth
26 in the Notice of Violations and the Complaint.

27 **6.2** Nothing in this release is intended to apply to any occupational or environmental
28 exposures arising under Proposition 65, nor shall it apply to any of Aloe Vera's products other

1 than the Covered Products.

2 **7. MOTION FOR COURT APPROVAL**

3 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
4 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
5 Code of Regulations § 3000, *et seq.* This motion shall be served upon Aloe Vera and upon the
6 California Attorney General's Office. Aloe Vera and ERC shall use their best efforts to support
7 entry of this Consent Judgment in the form submitted to the Court for approval.

8 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
9 California Attorney General objects in writing to any term in this Consent Judgment or files an
10 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
11 manner prior to the hearing on the motion. If the concern of the California Attorney General is
12 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
13 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph
14 17 below and notice to the California Attorney General's Office, and upon such notice this
15 Consent Judgment shall be null and void.

16 7.3 This Consent Judgment shall be effective only after it has been entered by the
17 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
18 any purpose.

19 **8. RETENTION OF JURISDICTION**

20 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
21 Consent Judgment.

22 **9. MODIFICATION OF CONSENT JUDGMENT**

23 This Consent Judgment after its entry by the Court may be modified only upon written
24 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.
25 In the event of an agreed upon modification, Aloe Vera shall reimburse ERC its attorneys' fees
26 and costs associated with a joint motion or application to the Court in support of the agreed upon
27 modification of the Consent Judgment.

28

1 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
2 **RESOLVE DISPUTES**

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

14 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

15 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
16 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable
17 provisions shall not be adversely affected.

18 **12. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 **13. RELATION TO OTHER ACTIONS**

22 This Consent Judgment shall have no application or effect on Aloe Vera for sales of the
23 Covered Products to consumers located outside the State of California.

24 **14. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective legal counsel
26 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the
27 terms and conditions with its legal counsel. The Parties agree that, in any subsequent
28 interpretation or construction of this Consent Judgment, no inference, assumption or presumption

1 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,
2 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
3 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the
4 Parties participated equally in the preparation and drafting of this Consent Judgment.

5 **15. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties regarding the entire subject matter hereof, and supersedes and replaces any and all prior
8 agreements or understandings, written or oral, regarding the matters set forth herein. No other
9 agreements or understandings not specifically referred to herein, oral or otherwise, shall be
10 deemed to exist or to bind any of the Parties.

11 **16. EXECUTION IN COUNTERPARTS**

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

15 **17. NOTICES**

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

18 **FOR ERC:**

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

22 Philip T. Emmons
23 Law Office of Philip T. Emmons
24 1990 North California Blvd., 8th Floor
25 Walnut Creek, CA 94596-3742

25 Karen A. Evans
26 Law Office of Karen A. Evans
27 4218 Biona Place
28 San Diego, CA 92116

1 **FOR ALOE VERA:**

2 Darin Reber
3 Executive Director of Legal Services
4 for Aloe Vera of America, Inc. and Forever Living.com, L.L.C.
5 7501 East McCormick Pkwy
6 Scottsdale, AZ 85258

7 Carol R. Brophy
8 Sedgwick LLP
9 333 Bush Street, 30th Floor
10 San Francisco, CA 94101

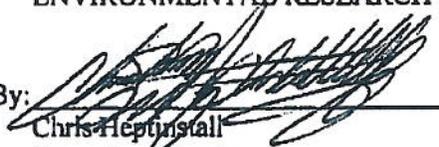
11 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

12 Each person signing this Consent Judgment on behalf of a Party certifies he or she is fully
13 authorized by that Party to stipulate to the terms and conditions of this Consent Judgment on
14 behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party, and
15 to legally bind that Party to this Consent Judgment. Each person signing this Consent Judgment
16 on behalf of a Party represents and warrants he or she has read and understands this Consent
17 Judgment, and agrees to all of the terms and conditions of this Consent Judgment on behalf of
18 that Party.

19 **IT IS SO STIPULATED:**

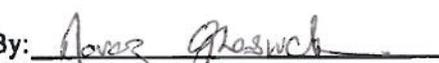
20 Dated: 5/20/2014

ENVIRONMENTAL RESEARCH CENTER

21 By: 
22 Chris Heptinstall
23 Executive Director

24 Dated: 5/21/2014

ALOE VERA OF AMERICA, INC.

25 By: 
26 Navaz Ghaswala, Executive Vice
27 President and Secretary

1 Dated: 5/21/2014

FOREVER LIVING.COM, L.L.C.

2
3 By: Navaz Ghaswala
Navaz Ghaswala, Executive Vice
4 President and Secretary

5
6 **APPROVED AS TO FORM:**

7
8 Dated: 5/20/14

LAW OFFICE OF PHILIP T. EMMONS

9
10 By: Philip T. Emmons
Philip T. Emmons
11 Attorney for Plaintiff
12 Environmental Research Center

13 Dated: 5/20/14

SEDGWICK LLP

14
15 By: Carol R. Brophy
16 Carol R. Brophy
17 Attorney for Defendants
18 Aloe Vera of America, Inc.,
19 Forever Living Products International, LLC,
20 Forever Living Products U.S., Inc.,
21 Forever Living.com, L.L.C., and
22 Forever Living Products, L.L.C.

23 **ORDER AND JUDGMENT**

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

26 IT IS SO ORDERED, ADJUDGED AND DECREED.

27 Dated: _____

Judge of the Superior Court

EXHIBIT A

LAW OFFICE OF
PHILIP T. EMMONS
1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596
Tel: (925) 287-6436

May 9, 2012

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

VIA CERTIFIED MAIL

Current CEO or President
Aloe Vera of America, Inc.
13745 Jupiter Rd.
Dallas, TX 75238

CT Corporation System
(Aloe Vera of America, Inc.'s Agent
for Service of Process)
350 N. ST. Paul St. Suite 2900
Dallas, TX 75201

RJAY LLOYD
(As Aloe Vera of America, Inc.'s
Statutory Agent)
7501 E McCormack Pkwy
Scottsdale, AZ 85258

Current CEO or President
Forever Living Products International, LLC
7501 E McCormick Pkwy, #100LL
Scottsdale, AZ – 85258

DARIN REBER
(As Forever Living Products
International, LLC's Statutory Agent)
7501 E McCormack Pkwy #100 LL
Scottsdale, AZ 85258

The Corporation Trust Company of Nevada
(Registered Agent for Forever Living
Products International, LLC)
311 S Division St.
Carson City, NV 89703

Current CEO or President
Forever Living Products U.S., Inc.
7501 E McCormack Pkwy #100LL
Scottsdale, AZ 85258

DARIN REBER
(As Forever Living Products U.S., Inc.'s
Statutory Agent)
7501 E McCormack Pkwy
Scottsdale, AZ 85258

The Corporation Trust Company of Nevada
(Registered Agent for Forever Living
Products U.S., Inc.)
311 S Division St.
Carson City, NV 89703

Current CEO or President
Forever Living.Com, L.L.C.
7501 E McCormack Pkwy
Scottsdale, AZ 85258

DARIN REBER
(Forever Living.Com, L.L.C.'s Statutory
Agent)
7501 E McCormack Pkwy, #100LL
Scottsdale, AZ 85258

Current CEO or President
Forever Living Products, L.L.C.
7501 E McCormack Pkwy #100LL
Scottsdale, AZ 85258

EXHIBIT **A**

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 9, 2012
Page 2

DARIN REBER
(Forever Living Products, L.L.C.'s
Statutory Agent)
7501 E McCormack Pkwy #100LL
Scottsdale, AZ 85258

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)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 3111 Camino Del Rio North, Suite 400, 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 Violator 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 Violator 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 on the alleged Violator identified below.

Alleged Violator. The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violator") are:

Aloe Vera of America, Inc.
Forever Living Products International, LLC
Forever Living Products U.S., Inc.
Forever Living.Com, L.L.C.
Forever Living Products, L.L.C.

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

Aloe Vera of America Inc. Forever Living Products Forever Lite Ultra with Aminotein Vanilla Shake Mix - Lead

Aloe Vera of America Inc. Forever Living Products Forever Lean – Lead

Forever Living Products Sonya 310 Caramel Aloe Mineral Makeup – Lead

Forever Living Products Sonya 308 Natural Aloe Mineral Makeup – Lead

Forever Living Products Sonya 309 Amber Aloe Mineral Makeup - 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 the chemical lead in the first two listed products has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact. The primary route of exposure for the chemical lead in the makeup products, has and continues to be through dermal contact, but may also occur and may continue to occur through inhalation and/or ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 9, 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 Violator 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 Violator 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.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 9, 2012
Page 4

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,



Philip T. Emmons, Esq.

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Aloe Vera of America, Inc.; Forever Living Products International, LLC.; Forever Living Products U.S., Inc.; Forever Living.Com, L.L.C.; Forever Living Products, L.L.C., and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

Re: Environmental Research Center's Notice of Proposition 65 Violations by Aloe Vera of America, Inc., Forever Living Products International, LLC, Forever Living Products U.S., Inc., Forever Living.Com, L.L.C., Forever Living Products, L.L.C.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Philip T. Emmons, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 alleged exposure to the listed chemical that is the subject of the action.
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. The copy of this Certificate of Merit served on the Attorney General attaches to it additional factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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

Philip T. Emmons

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. 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
Aloe Vera of America, Inc.
13745 Jupiter Rd.
Dallas, TX 75238

RJAY LLOYD
(As Aloe Vera of America, Inc.'s
Statutory Agent)
7501 E McCormack Pkwy
Scottsdale, AZ 85258

DARIN REBER
(As Forever Living Products
International, LLC's Statutory Agent)
7501 E McCormack Pkwy #100 LL
Scottsdale, AZ 85258

Current CEO or President
Forever Living Products U.S., Inc.
7501 E McCormack Pkwy #100LL
Scottsdale, AZ 85258

The Corporation Trust Company of Nevada
(Registered Agent for Forever Living
Products U.S., Inc.)
311 S Division St.
Carson City, NV 89703

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(Forever Living.Com, L.L.C.'s Statutory
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7501 E McCormack Pkwy, #100LL
Scottsdale, AZ 85258

CT Corporation System
(Aloe Vera of America, Inc.'s Agent
for Service of Process)
350 N. ST. Paul St. Suite 2900
Dallas, TX 75201

Current CEO or President
Forever Living Products International, LLC
7501 E McCormick Pkwy, #100LL
Scottsdale, AZ - 85258

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(Registered Agent for Forever Living
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311 S Division St.
Carson City, NV 89703

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Scottsdale, AZ 85258

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Forever Living.Com, L.L.C.
7501 E McCormack Pkwy
Scottsdale, AZ 85258

Current CEO or President
Forever Living Products, L.L.C.
7501 E McCormack Pkwy #100LL
Scottsdale, AZ 85258

DARIN REBER
(Forever Living Products, L.L.C.'s
Statutory Agent)
7501 E McCormack Pkwy #100LL
Scottsdale, AZ 85258

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 9, 2012
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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 18000
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 95645

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

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words,

the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.