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7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER

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12 Roseville, CA 95661

13 Attorney for Defendants
14 AIM INTERNATIONAL, INC., AIM USA, INC.,
15 AIM INTERNATIONAL UK, INC., AIM AFRICA
16 INC., AIM AUSTRALIA, INC.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF SAN FRANCISCO

19 ENVIRONMENTAL RESEARCH
20 CENTER, a California non-profit
21 corporation,

22 Plaintiff,

23 v.

24 AIM INTERNATIONAL, INC., AIM USA,
25 INC., AIM INTERNATIONAL UK, INC.,
26 AIM AFRICA INC., AIM AUSTRALIA,
27 INC., AND DOES 1-100

28 Defendants.

CASE NO. CGC-13-532294

[PROPOSED] STIPULATED
CONSENT JUDGMENT; [PROPOSED]
ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: June 21, 2013
Trial Date: None set

1. INTRODUCTION

1.1 On June 21, 2013, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
2 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
3 (“Proposition 65”), against AIM International, Inc., AIM USA, INC., AIM International UK,
4 Inc., AIM Africa Inc., AIM Australia, Inc. (collectively “AIM”) and DOES 1-100. In this
5 action, ERC alleges that the products manufactured, distributed or sold by AIM, as more fully
6 described below, contain lead, a chemical listed under Proposition 65 as a carcinogen and
7 reproductive toxin, and that such products expose consumers at a level requiring a Proposition
8 65 warning. These products are:

- 9 • AIM Leaf Greens
- 10 • AIM Barley Life
- 11 • AIM Herbal Fiberblend
- 12 • AIM Para 90
- 13 • AIM Herbal Release
- 14 • AIM Barley Life Xtra
- 15 • AIM Peak Endurance
- 16 • AIM Fit ‘N Fiber

17 (collectively “Covered Products”). ERC and AIM are referred to individually as a “Party” or
18 collectively as the “Parties.”

19 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
20 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
21 and toxic chemicals, facilitating a safe environment for consumers and employees, and
22 encouraging corporate responsibility.

23 **1.3** AIM is a business entity that employed ten or more persons. AIM arranges the
24 manufacture, distribution and sale of the Covered Products.

25 **1.4** The Complaint is based on allegations contained in ERC’s Notice of Violation,
26 dated November 30, 2012, that was served on the California Attorney General, other public
27 enforcers, and AIM. A true and correct copy of the Notice of Violation is attached as Exhibit
28 A. More than 60 days have passed since the Notice of Violation was mailed, and no

1 designated governmental entity has filed a complaint against AIM with regard to the Covered
2 Products or the alleged violations.

3 **1.5** ERC's Notice of Violation and the Complaint allege that use of the Covered
4 Products exposes persons in California to lead without first providing clear and reasonable
5 warnings in violation of California Health and Safety Code section 25249.6. AIM denies all
6 material allegations contained in the Notice of Violation and Complaint and specifically
7 denies that the Covered Products required a Proposition 65 warning or otherwise caused harm
8 to any person. AIM asserts that any detectible levels of lead in the Covered Products are the
9 result of naturally occurring lead levels, as provided for in California Code of Regulations,
10 Title 27, Section 25501(a).

11 **1.6** The Parties have entered into this Consent Judgment in order to settle,
12 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
13 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
14 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
15 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,
16 suppliers, distributors, wholesalers, or retailers. Except for the representations made above,
17 nothing in this Consent Judgment shall be construed as an admission by AIM or ERC of any
18 fact, issue of law, or violation of law, nor shall compliance with this Consent Judgment be
19 construed as an admission by AIM or ERC of any fact, issue of law, or violation of law, at
20 any time, for any purpose.

21 **1.7** Except as expressly set forth herein, nothing in this Consent Judgment shall
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
23 any other or future legal proceeding unrelated to these proceedings.

24 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
25 a Judgment by this Court.

26
27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment only, the Parties stipulate that this Court has

1 jurisdiction over the allegations of violations contained in the Complaint and personal
2 jurisdiction over AIM as to the acts alleged in the Complaint, that venue is proper in San
3 Francisco County, and that this Court has jurisdiction to enter this Consent Judgment as a full
4 and final resolution of all claims which were or could have been asserted in this action based on
5 the facts alleged in the Notice of Violation and the Complaint.
6

7 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

8 **3.1** Beginning on the Effective Date, AIM shall not manufacture for sale in the
9 State of California, distribute into the State of California¹, or directly sell in the State of
10 California, any Covered Products which expose a person to a daily dose of lead more than 0.5
11 micrograms per day when the maximum suggested dose is taken as directed on the Covered
12 Product's label, unless each such unit of the Covered Product (1) qualifies as a "Reformulated
13 Covered Product" under Section 3.3, or (2) meets the warning requirements under Section 3.2.

14 **3.2 Clear and Reasonable Warnings**

15 If AIM provides a warning for Covered Products pursuant to Section 3.1, AIM must provide one
16 of the following warnings:
17

18 **[California Residents Proposition 65] WARNING [(California Proposition**
19 **65)]:** This product contains [lead,] [a] chemical[s] known to the State of
20 California to cause [cancer and] birth defects or other reproductive harm.
21

22 **[California Residents Proposition 65] WARNING [(California Proposition**
23 **65)]:** This product contains [lead,] [a] substance[s] known to the State of
24 California to cause [cancer and] birth defects or other reproductive harm.
25

26 ¹ As used in Consent Judgment, the term "distribute for sale into California" shall mean
27 to directly ship a Covered Product into California for sale in California or to sell a Covered
28 Product to a distributor that AIM knows will sell the Covered Product in California.

1 AIM shall use the term “cancer” in the warning only if the maximum daily dose recommended
2 on the label contains more than 15 micrograms of lead.

3 AIM shall provide the warning on all Covered Products shipped to California. The
4 warning appearing on the label or container shall be at least the same size as the largest of any
5 other health or safety warnings correspondingly appearing on the label or container, as
6 applicable, on such product, and the word “**WARNING**” shall be in all capital letters and in bold
7 print. No other statements about Proposition 65 or lead may appear on the product label.
8

9 AIM must display the above warnings with such conspicuousness, as compared with other
10 words, statements, or design of the label or container, as applicable, to render the warning likely
11 to be read and understood by an ordinary individual under customary conditions of purchase or
12 use of the product.
13

14 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

15 A Reformulated Covered Product is one for which the maximum recommended daily
16 serving on the label contains no more than 0.5 micrograms of lead per day as determined by
17 the methodology described in Section 3.4. As used in this Consent Judgment, “no more than
18 0.5 micrograms of lead per day” means that the samples of the testing performed by AIM
19 under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead (with daily
20 exposure calculated pursuant to Section 3.4 of this Consent Judgment).
21

22 **3.4 Testing**

23 **3.4.1** Once a year, on or before the anniversary of the entry of the Consent
24 Judgment, AIM shall test, or require its supplier to test, three (3) randomly selected samples
25 of each Covered Product (in the form intended for sale to the end-user) for lead content. This
26 testing requirement does not apply to a Covered Product for which AIM has provided the
27 warning specified in Section 3.2 since the Effective Date.
28

1 **3.4.2** For purposes of this Consent Judgment, daily lead exposure levels shall
2 be measured in micrograms, and shall be calculated using the following formula: micrograms
3 of lead per gram of product, multiplied by grams of product per serving of the product (using
4 the largest serving size appearing on the product label), multiplied by servings of the product
5 per day (using the largest number of servings in a recommended dosage appearing on the
6 product label), which equals micrograms of lead exposure per day.

7 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, limit of qualification, accuracy, and
10 precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry
11 (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other
12 testing method subsequently agreed upon in writing by the Parties.

13 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
14 independent third-party laboratory certified by the California Environmental Laboratory
15 Accreditation Program for the analysis of heavy metals or an independent third-party
16 laboratory that is registered with the United States Food & Drug Administration. AIM may
17 perform this testing itself only if it provides to ERC proof that its laboratory meets the
18 requirements in Section 3.4.3 and this Section 3.4.4. Nothing in this Consent Judgment shall
19 limit AIM's ability to conduct, or require that others conduct, additional testing of the
20 Covered Products, including the raw materials used in their manufacture.

21 **3.4.5** If tests conducted pursuant to this Section demonstrate that no warning is
22 required for a Covered Product during each of five (5) consecutive years, then the testing
23 requirements of this Section will no longer be required as to that Covered Product. However,
24 if after the five-year period, AIM changes ingredient suppliers for any of the Covered
25 Products and/or reformulates any of the Covered Products and does not provide the warning
26 set forth in Section 3.2, AIM shall test that Covered Product at least once after such change is
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1 made. The testing requirements discussed in Section 3.4 are not applicable to any Covered
2 Product for which AIM has provided the warning as specified in Section 3.2.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
5 penalties, attorney’s fees, and costs, AIM shall make a total payment of \$62,500 by check
6 within ten (10) business days of receiving the Notice of Entry of Judgment. Said payment
7 shall be for the following:

8 **4.2** \$9,244.00 shall be payable as civil penalties pursuant to California Health and
9 Safety Code section 25249.7(b)(1). Of this amount, \$6,933.00 shall be payable to the Office
10 of Environmental Health Hazard Assessment (“OEHHA”) and \$2,311.00 shall be payable to
11 Environmental Research Center. California Health and Safety Code section 25249.12(c)(1) &
12 (d). AIM shall send both civil penalty payments to ERC’s counsel who will be responsible
13 for forwarding the civil penalty.

14 **4.3** \$19,641.00 shall be payable to Environmental Research Center as
15 reimbursement to ERC for (A) reasonable costs associated with the enforcement of
16 Proposition 65 and other costs incurred as a result of work in bringing this action; and
17 (B) \$13,865.86 shall be payable to Environmental Research Center in lieu of further civil
18 penalties, for the day-to-day business activities such as (1) continued enforcement of
19 Proposition 65, which includes work, analyzing, researching and testing consumer products
20 that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible
21 products that are the subject matter of the current action; (2) the continued monitoring of past
22 consent judgments and settlements to ensure companies are in compliance with Proposition
23 65; and (3) giving a donation of \$695.00 to As You Sow to address reducing toxic chemical
24 exposures in California.
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1 **4.4** \$15,705.00 shall be payable to Michael Freund as reimbursement of ERC's
2 attorney's fees. \$4,044.14 shall be payable to Ryan Hoffman as reimbursement of ERC's
3 attorney's fees.

4 **4.5** AIM shall mail or deliver the payments in this Section by check to the Law
5 Office of Michael Freund at the address stated in Section 11. AIM will be provided with
6 taxpayer identification information to enable AIM to process the payments.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
9 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
10 judgment.

11 **5.2** If AIM seeks to modify this Consent Judgment under Section 5.1, then AIM
12 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet
13 and confer regarding the proposed modification in the Notice of Intent, then ERC must
14 provide written notice to AIM within thirty days of receiving the Notice of Intent. If ERC
15 notifies AIM in a timely manner of ERC's intent to meet and confer, then the Parties shall
16 meet and confer in good faith as required in this Section. The Parties shall meet and confer
17 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty
18 days of such meet and confer meeting or telephone conference, if ERC disputes the proposed
19 modification, ERC shall provide to AIM a written basis for its position. The Parties shall
20 continue to meet and confer for an additional thirty (30) days in an effort to resolve any
21 remaining disputes. The Parties may agree in writing to different deadlines for the meet-and-
22 confer period.

23 **5.3** Where the meet-and-confer process does not lead to a joint motion or
24 application in support of a modification of the Consent Judgment, then either Party may seek
25 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs
26 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
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1 means a party who is successful in obtaining relief more favorable to it than the relief that the
2 other party was amenable to providing during the Parties' good faith attempt to resolve the
3 dispute that is the subject of the modification.

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

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or
7 terminate this Consent Judgment.

8 **6.2** Only after it complies with Section 15 below may any Party, by motion or
9 application for an order to show cause filed with this Court, enforce the terms and conditions
10 contained in this Consent Judgment.

11 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
12 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
13 inform AIM in a reasonably prompt manner of its test results, including information sufficient
14 to permit AIM to identify the Covered Products at issue. AIM shall, within thirty days
15 following such notice, provide ERC with information regarding the warning provided or
16 testing information, from an independent third-party laboratory meeting the requirements of
17 Sections 3.4.2 and 3.4.3, demonstrating AIM's compliance with the Consent Judgment, if
18 warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further
19 legal action.
20

21 **7. APPLICATION OF CONSENT JUDGMENT**

22 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
23 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
24 divisions, affiliates, franchisees, licensees, customers, (excluding private labelers) distributors,
25 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have
26 no application to Covered Products which are distributed or sold exclusively outside the State of
27 California and which are not used by California consumers. This Consent Judgment shall
28

1 terminate without further action by any Party when AIM no longer manufactures, distributes or
2 sells all of the Covered Products and all of such Covered Products previously “distributed for
3 sale in California” have reached their expiration dates and are no longer sold.

4
5 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

6 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
7 on behalf of itself and in the public interest, and AIM, of any alleged violation of Proposition
8 65 or its implementing regulations for failure to provide Proposition 65 warnings for exposure
9 to lead from the handling, use, or consumption of the Covered Products and fully resolves all
10 claims that have been or could have been asserted in this action up to and including the
11 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,
12 on behalf of itself and in the public interest, hereby releases and discharges AIM and its
13 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
14 divisions, affiliates, suppliers, franchisees, licensees, customers, (not including private
15 labelers of AIM) distributors, wholesalers, retailers, and all other upstream and downstream
16 entities in the distribution chain of any Covered Product, and the predecessors, successors and
17 assigns of any of them (collectively, “Released Parties”), from any and all claims, actions,
18 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
19 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising
20 from the failure to provide Proposition 65 warnings on the Covered Products regarding lead.

21 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
22 Parties from all known and unknown claims, causes of action, suits, damages, penalties,
23 liabilities, injunctive relief, declaratory relief, attorney’s fees, costs, and expenses arising from
24 or related to the claims asserted or that could have been asserted, under state or federal law,
25 regarding the presence of lead in the Covered Products or the facts alleged in the Notice of
26 Violation or the Complaint, including without limitation any and all claims concerning
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1 exposure to any person to lead in the Covered Products up to, and including, the Effective
2 Date..

3 **8.3** Unknown Claims. It is possible that other claims not known to the Parties
4 arising out of the facts alleged in the Notice of Violation or the Complaint and relating to the
5 Covered Products will develop or be discovered. ERC, on behalf of itself only, acknowledges
6 that this Consent Judgment is expressly intended to cover and include all such claims,
7 including all rights of action therefore. ERC has full knowledge of the contents of California
8 Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the claims released
9 in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waives
10 California Civil Code section 1542 as to any such unknown claims. California Civil Code
11 section 1542 reads as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
13 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
14 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
15 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

16 ERC, on behalf of itself only, acknowledges and understands the significance and
17 consequences of this specific waiver of California Civil Code Section 1542.

18 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
20 to lead in the Covered Products.

21 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures arising under Proposition 65, nor shall it apply to any of AIM's
23 products other than the Covered Products.

24 **8.6** ERC and AIM each release and waive all claims they may have against each
25 other for any statements or actions made or undertaken by them in connection with the Notice
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1 of Violation or the Complaint; provided, however, that nothing in Section 8 shall affect or
2 limit any Party's right to seek to enforce the terms of this Consent Judgment.

3 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

4 In the event that any of the provisions of this Consent Judgment is held by a court to be
5 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
6 affected.

7
8 **10. GOVERNING LAW**

9 The terms and conditions of this Consent Judgment shall be governed by and construed in
10 accordance with the laws of the State of California.

11 **11. PROVISION OF NOTICE**

12 All notices required to be given to either Party to this Consent Judgment by the other shall be in
13 writing and sent to the following agents listed below by: (a) first-class, registered, or certified
14 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

15
16
17 **FOR ENVIRONMENTAL RESEARCH CENTER:**

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

22 With a copy to:

23 Michael Freund SBN 99687
24 Michael Freund & Associates
25 1919 Addison Street, Suite 105
26 Berkeley, CA 94704
27 Telephone: (510) 540-1992
28 Facsimile: (510) 540-5543

FOR AIM:

1 Wendi Combs
2 The AIM Companies
3 3923 E. Flamingo Avenue
4 Nampa, ID 83687-3100

5 With a copy to:

6 Margaret Carew Toledo
7 Toledo Don LLP
8 3001 Douglas Blvd., Suite 340
9 Roseville, CA 95661

10 **12. COURT APPROVAL**

11 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
12 void and have no force or effect.

13 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)
14 and with Title II of the California Code Regulations, Section 3003.

15 **13. EXECUTION AND COUNTERPARTS**

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

19 **14. DRAFTING**

20 The terms of this Consent Judgment have been reviewed by the respective counsel for the each
21 Party to this settlement prior to its signing, and each Party has had an opportunity to fully discuss
22 the terms with counsel. The Parties agree that, in any subsequent interpretation and construction
23 of this Consent Judgment entered thereon, the terms and provisions shall not be construed
24 against any Party.

25 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

26 If a dispute arises with respect to either Party's compliance with the terms of this Consent
27 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
28 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of

1 such a good faith attempt to resolve the dispute beforehand.

2 **16. ENTIRE AGREEMENT, AUTHORIZATION**

3 **16.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred
8 to herein, shall be deemed to exist or to bind any Party.

9 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
11 explicitly provided herein, each Party shall bear its own fees and costs.

12 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY**
13 **OF CONSENT JUDGMENT**

14 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
15 request the Court to fully review this Consent Judgment and, being fully informed regarding the
16 matters which are the subject of this action, to make the findings pursuant to California Health
17 and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent
18 Judgment.
19

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22 **IT IS SO STIPULATED:**

23
24 Dated: 4/15/, 2014

ENVIRONMENTAL RESEARCH
CENTER

25
26 By: 
27 Chris Hepinstall, Executive Director

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Dated: April 15th, 2014

AIM INTERNATIONAL, INC., AIM
USA, INC., AIM INTERNATIONAL UK,
INC., AIM AFRICA INC., AIM
AUSTRALIA, INC.,

By: Dee Anna Fowble
Dee Anna Fowble
CFO & Corporate Secretary

APPROVED AS TO FORM:

Dated: _____, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: _____
Michael Freund SBN 99687
Attorney for Plaintiff

Dated: _____, 2014

AIM INTERNATIONAL, INC., AIM
USA, INC., AIM INTERNATIONAL UK,
INC., AIM AFRICA INC., AIM
AUSTRALIA, INC.

By: _____
Margaret Carew Toledo
Attorney for Defendants

1 Dated: _____, 2014


2 AIM INTERNATIONAL, INC., AIM
3 USA, INC., AIM INTERNATIONAL UK,
4 INC., AIM AFRICA INC., AIM
5 AUSTRALIA, INC.,

6 By: _____

7 **APPROVED AS TO FORM:**

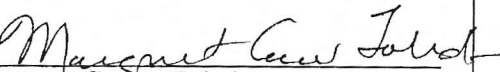
8 Dated: April 15, 2014

9 ENVIRONMENTAL RESEARCH
10 CENTER

11 By: 
12 Michael Freund SBN 99687
13 Attorney for Plaintiff

14 Dated: April 14, 2014

15 AIM INTERNATIONAL, INC., AIM
16 USA, INC., AIM INTERNATIONAL UK,
17 INC., AIM AFRICA INC., AIM
18 AUSTRALIA, INC.

19 By: 
20 Margaret Carew Toledo
21 Attorney for Defendants
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JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2014

Judge of the Superior Court

EXHIBIT A

MICHAEL FREUND
ATTORNEY AT LAW
1919 Addison Street, Suite 105
BERKELEY, CALIFORNIA 94704-101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

November 30, 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, 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 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 Violator. The names of the companies covered by this notice that violated Proposition 65 (hereinafter “the Violators”) are:

AIM International, Inc.
AIM USA, Inc.
AIM International UK, Inc.
AIM Africa, Inc.
AIM Australia, Inc.

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:

AIM International Inc. AIM USA, Inc. AIM Leaf Greens Natural Citrus - Lead

AIM International Inc. AIM USA, Inc. AIM Barley Life – Lead

AIM International Inc. AIM USA, Inc. AIM Herbal Fiberblend – Lead

AIM International Inc. AIM USA, Inc. AIM Para 90 – Lead

AIM International Inc. AIM USA, Inc. AIM Herbal Release – Lead

AIM International Inc. AIM Barley Life Xtra – Lead

AIM International Inc. AIM Herbal Fiberblend Natural Raspberry - Lead

AIM International Inc. AIM Peak Endurance Natural Grape Energy Drink Made With Peak – Lead

AIM International Inc. AIM Fit 'N Fiber Natural Peach – Lead

AIM International Inc. AIM Barley Life - 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 November 30, 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,



Michael Freund

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

November 30, 2012

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Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to AIM International, Inc., AIM USA, Inc., AIM International UK, Inc., AIM Africa, Inc., AIM Australia, Inc. and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by AIM International, Inc., AIM USA, Inc., AIM International UK, Inc., AIM Africa, Inc., and AIM Australia, Inc.

I, Michael Freund, 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: November 30, 2012



Michael Freund

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 November 30, 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 President or CEO
AIM International, Inc.
3923 E. Flamingo Avenue
Nampa, ID 83687

Ronald A. Wright
(AIM International, Inc.'s Registered Agent for Service
of Process)
3923 E. Flamingo Avenue
Nampa, ID 83687

Current President or CEO
AIM USA, Inc.
3923 E. Flamingo Avenue
Nampa, ID 83687

Ronald A. Wright
(AIM USA, Inc.'s Registered Agent for Service of Process)
3923 E. Flamingo Avenue
Nampa, ID 83687

Current President or CEO
AIM International UK, Inc.
3923 E. Flamingo Avenue
Nampa, ID 83687

Ronald A. Wright
(AIM International UK, Inc.'s Registered Agent for Service
of Process)
3923 E. Flamingo Avenue
Nampa, ID 83687

Current President or CEO
AIM Africa, Inc.
3923 E. Flamingo Avenue
Nampa, ID 83687

Ronald A. Wright
(AIM Africa, Inc.'s Registered Agent for Service of Process)
3923 E. Flamingo Avenue
Nampa, ID 83687

Current President or CEO
AIM Australia, Inc.
3923 E. Flamingo Avenue
Nampa, ID 83687

Ronald A. Wright
(AIM Australia, Inc.'s Registered Agent for Service of Process)
3923 E. Flamingo Avenue
Nampa, ID 83687

On November 30, 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.*

November 30, 2012

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On November 30, 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 First Class Mail.

Executed on November 30, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
November 30, 2012
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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 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, Suite 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, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 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 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 rd 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 City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 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 th 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, Suite 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 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive 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 th Street, Ste 300 Modesto, CA 95354	
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 nd 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 Blvd., Room 224 Visalia, CA 93291	