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9 ENVIRONMENTAL RESEARCH CENTER

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17 Attorney for Defendant  
18 HEALTHWEST MINERALS, INC.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **COUNTY OF ALAMEDA**

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

23 Plaintiff,

24 v.

25 HEALTHWEST MINERALS, INC., a  
26 Washington corporation,

27 Defendant.

Case No. RG 14-711281

**[PROPOSED] STIPULATED CONSENT**

**JUDGMENT**

Health & Safety Code §§ 25249.5 *et seq.*

Dept: 24

Action Filed: January 23, 2014

Trial Date: None set

28  
1  
**CONSENT JUDGMENT**

**Environmental Research Center v. Healthwest Minerals, Inc.**

2794147.1

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. HEALTHWEST MINERALS, INC. is a Washington Corporation, and is referred  
7 to hereinafter as "Healthwest" or "Defendant". ERC and Healthwest are referred to individually  
8 as a "Party" and collectively as the "Parties".

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

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

13 E. On October 1, 1992, the State of California listed the chemicals lead and lead  
14 compounds as chemicals known to cause cancer, pursuant to California Health and Safety Code  
15 § 25249.8.

16 F. ERC alleges that the Covered Products have been sold by Defendant in California  
17 since May 17, 2010.

18 G. On May 17, 2013 ERC served Defendant and public enforcement agencies with a  
19 document entitled "60-Day Notice" that provided Defendant and the public enforcement  
20 agencies with notice alleging that Defendant was in violation of Proposition 65 for failing to  
21 warn purchasers and individuals using the Group 1 Covered Products, as identified on Exhibit A,  
22 that such use exposes them to lead, a chemical known to the State of California to cause cancer  
23 and/or reproductive toxicity ("**Initial Proposition 65 Notice**"). A copy of the Initial Proposition  
24 65 Notice is attached hereto as **Exhibit B**. On September 13, 2013 ERC served Defendant and  
25 public enforcement agencies with a document entitled "60-Day Notice" that provided Defendant  
26 and the public enforcement agencies with notice alleging that Defendant was in violation of  
27  
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1 Proposition 65 for failing to warn purchasers and individuals using the Group 2 Covered  
2 Products, as identified on Exhibit A, that such use exposes them to lead, a chemical known to the  
3 State of California to cause cancer and/or reproductive toxicity ("**Second Proposition 65**  
4 **Notice**"). A copy of the Initial Proposition 65 Notice is attached hereto as Exhibit C. The  
5 Initial Proposition 65 Notice and the Second Proposition 65 Notice are referred to together as the  
6 "**Proposition 65 Notice**".

7  
8 H. On or about January 23, 2014, ERC filed a Complaint against Defendant in the  
9 Alameda County Superior Court (the "**Action**"), alleging violations of Proposition 65, based on  
10 the Proposition 65 Notice. This Action is brought by ERC in the public interest at least sixty  
11 (60) days after ERC provided notice of the alleged Proposition 65 violations to Defendant and  
12 the public enforcement agencies and none of the public enforcement agencies had commenced  
13 and/or begun diligently prosecuting an action against Defendant for such violations.

14 I. For purposes of this Consent Judgment only, the Parties stipulate that this Court  
15 has jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is  
16 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the  
17 provisions of this Consent Judgment. This Consent Judgment shall have no application or effect  
18 on Defendant for Covered Products or other products distributed or sold by Defendant to  
19 consumers outside of the State of California only.

20  
21 J. Defendant denies the material, factual and legal allegations contained in Plaintiff's  
22 Complaint and maintains that all Covered Products that Defendant sold and distributed in  
23 California have been and are in compliance with all laws, including Proposition 65. The Parties  
24 enter into this Consent Judgment pursuant to a settlement of disputed claims between them as  
25 alleged in the Complaint for the purposes of avoiding prolonged and costly litigation. By  
26 execution of this Consent Judgment, Defendant does not admit any facts or conclusions of law  
27 suggesting or demonstrating any violations or the applicability of Proposition 65, or any other  
28 statutory, common law or equitable requirements relating to the Covered Products. Nothing in

1 this Consent Judgment shall be construed as an admission by Defendant or Plaintiff of any fact,  
2 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or  
3 be construed as an admission by Defendant or Plaintiff of any fact, issue of law, or violation of  
4 law.

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

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

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

13 1. **Injunctive Relief.** On and after the Effective Date of this Consent Judgment,  
14 Defendant shall not distribute into the State of California, or directly sell in the State of  
15 California any Covered Product for which the maximum dose recommended on the label  
16 contains more than 0.5 micrograms (mcg) of lead, as calculated in accordance with the formula  
17 set forth in Paragraph 4, unless each individual Covered Product (in the form intended for sale  
18 to the end-user) bears one of the warning statements specified below on its individual unit label  
19 or unit packaging.

20 2. On and after the Effective Date of this Consent Judgment, for Covered Products for  
21 which the maximum dose recommended on the label contains more than 0.5 mcg of lead,  
22 Defendant shall, at the point of manufacture, prior to Defendant's shipment to California, or  
23 prior to Defendant's distribution within California, affix to or print on the Covered Product  
24 container, cap, label, or unit package the following warning:

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

1 The term "cancer and" shall be included in the warning only if the maximum recommended dose  
2 stated on the Covered Product's label contains more than 15 micrograms (mcg) of lead as  
3 calculated in accordance with the formula set forth in Paragraph 4 below.

4 The warning required above under this Paragraph 2 above shall be prominently affixed to  
5 or printed on the labeling of each Covered Product intended for sale to a purchaser in the State of  
6 California, with such conspicuousness, as compared with other words, statements, designs, or  
7 devices on the labeling as to render it likely to be read and understood by an ordinary individual  
8 under customary conditions of purchase or use. With regard to the sale of the Covered Product  
9 via the Internet, the warning stated in this Paragraph 2 shall be given, either: (a) on the same  
10 web page on which the Covered Product is displayed; (b) on the same web page as the order  
11 form for the Covered Product; (c) on the same page as the price for any Covered Product; or (d)  
12 on one or more web pages displayed to a purchaser during the checkout process before purchase  
13 is complete. The internet warning shall be used and shall appear in any of the above instances  
14 adjacent to or immediately following the display, description, or price of the Product for which it  
15 is given in the same type size or larger than the Covered Product's description text.

16 3. The warning shall not exceed the language specified in Paragraph 2 above, and  
17 shall not be accompanied by any explanation of Proposition 65, lead, or the "naturally occurring"  
18 exemption. If the warning is displayed on the Covered Product container or labeling, the  
19 warning shall be at least the same size as the largest of any other health or safety warnings on the  
20 container or labeling, and the word "WARNING" shall be in all capital letters and in bold print.  
21 If printed on the labeling itself, the warning shall be contained in the same section of the labeling  
22 that states other safety warnings concerning the use of the Covered Product. The injunctive  
23 relief set forth in Paragraphs 1, 2 and 3 above shall not apply to any of the Covered Products that  
24 Defendant put into the stream of commerce before the Effective Date.

26 4. Defendant may reformulate the Covered Products to reduce the lead content to  
27 below levels requiring a Proposition 65 warning, in which case the Parties agree that the Covered  
28 Products may be offered for sale in California without the warnings discussed in this Consent

1 Judgment. If Defendant contends that a Covered Product has been so reformulated, then at least  
2 once each year for three consecutive years, Defendant shall undertake testing of any  
3 reformulated Covered Product on which it does not intend to place a warning label discussed in  
4 Paragraph 2 above. Defendant shall arrange for the testing of at least five (5) randomly-selected  
5 samples of each such reformulated Covered Product for lead content, to confirm whether the  
6 daily dose is more or less than 0.5 micrograms of lead when the maximum recommended daily  
7 dose is taken as directed on the reformulated Covered Product's label. For purposes of  
8 determining whether a warning, if any, is required pursuant to Paragraph 1, the second-highest  
9 lead detection result of the five (5) randomly selected samples of the reformulated Covered  
10 Product will be controlling. For purposes of this Consent Judgment, daily lead exposure levels  
11 shall be measured in micrograms and shall be calculated using the following formula:  
12  
13 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
14 product (using the largest serving size appearing on the product's label), multiplied by servings  
15 of the product per day (using the largest serving size appearing on the product's label), which  
16 equals micrograms of lead exposure per day. All testing pursuant to this Consent Judgment shall  
17 be performed by a laboratory certified by the California Environmental Laboratory Accreditation  
18 Program for the analysis of heavy metals or a laboratory that is registered with the United States  
19 Food & Drug Administration. The method of selecting samples for testing must comply with the  
20 regulations of the Food and Drug Administration as set forth in Title 21, Part 111, Subpart E of  
21 the Code of Federal Regulations, including section 111.80(c). Testing for lead shall be  
22 performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of  
23 quantification of less than or equal to 0.010 mg/kg or any other testing method agreed upon in  
24 writing by the Parties. Nothing in this Consent Judgment shall limit Defendant's ability to  
25 conduct, or require that others conduct, additional testing of the Covered Products, reformulated  
26 or otherwise, including the raw materials used in their manufacture. This Consent Judgment,  
27 including the testing and sampling methodology set forth in this paragraph, is the result of  
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1 negotiation and compromise, and is accepted by the Parties for purposes of settling,  
2 compromising, and resolving issues disputed in this Action, including future compliance by  
3 Defendant with this Consent Judgment, and shall not be used for any other purpose, or in any  
4 other matter and, except for the purpose of determining future compliance with this Consent  
5 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed  
6 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g). For  
7 the three-year reporting period, Defendant shall send test results and documentation for any  
8 reformulated Covered Product to ERC within twenty (20) days of Defendant's receipt of the test  
9 results, and shall retain all test results and documentation for a period of four (4) years from the  
10 date of each test.

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

15 6. **Payments.** In full satisfaction of all potential civil penalties, payment in lieu of  
16 civil penalty, and attorneys' fees and costs, Defendant shall make a total payment of \$52,500, as  
17 follows:

18 6.1. **Civil Penalty Assessment.** Defendant agrees to pay a civil penalty in the  
19 amount of \$7,804.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff shall  
20 remit 75% of this amount \$5,853.00 to the State of California pursuant to Health &  
21 Safety Code §25192, and Plaintiff shall retain the remaining 25% of this amount  
22 \$1,951.00.

24 6.2. **Payment In Lieu of Further Civil Penalties.** Defendant agrees to make an  
25 additional payment in lieu of further civil penalties in the amount of \$11,705.50 to ERC  
26 for projects to reduce exposures to toxic chemicals, and to increase consumer, worker  
27 and community awareness of the health hazards posed by toxic chemicals. Of this  
28 amount, ERC will give a donation of \$585.00 to the Natural Resources Defense Council

1 to address reducing hazardous and toxic chemical exposures in California.

2           **6.3. Reimbursement of Plaintiff's Fees and Costs.** Defendant agrees to  
3 reimburse Plaintiff's reasonable attorneys' fees and costs incurred as a result of the work  
4 and prosecuting this Action, negotiating a settlement in the public interest, and obtaining  
5 required approval from the Office the California Attorney General and the Superior  
6 Court. \$19,038.00 shall be considered a reimbursement to ERC for its reasonable work,  
7 analysis, and costs associated with the enforcement of Proposition 65 and other expenses  
8 and costs incurred as a result of bringing this matter to Defendants' attention and  
9 negotiating a settlement. \$13,725.00 shall be considered reimbursement of attorney fees  
10 to Law Office of Michael Freund. \$227.50 shall be considered reimbursement of  
11 attorney fees to Ryan Hoffinan.  
12

13           **6.4. Payment Schedule.** Pursuant to Paragraphs 6.1., 6.2, and 6.3 herein,  
14 Defendant agrees to remit the total amount of \$52,500, with the schedule for the  
15 payment of these funds as follows: within 10 days of the Effective Date, Defendant shall  
16 pay the sum of \$26,250.00., Subsequently, Defendant shall make seven (7) successive  
17 monthly payments, each in the amount of \$3,750.00. The second payment shall be due  
18 30 days after the first payment, and each successive payment shall be made 30 days after  
19 the prior payment. If the payment due date falls on a weekend or state or federal  
20 holiday, the respective payment shall be due on the next business day. In the event that  
21 any payment owed under this Section 6 is not remitted on or before its due date, all  
22 future payments due herein shall become immediately due and payable within 15 days of  
23 the missed due date payment.  
24

25           **6.5. Payment Submission.** With respect to all payments required under this  
26 Consent Judgment, Defendant shall make all such payments by check payable to  
27 "Environmental Research Center" and sent by first-class registered or certified mail, or  
28 overnight delivery, to ERC at: Environmental Research Center, 3111 Camino Del Rio



1 North Suite 400, San Diego, CA. 92108. ERC will provide to Defendant evidence that a  
2 transmittal letter and civil penalty check to OEHHA was sent to OEHHA.

3 **7. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

4 7.1. This Consent Judgment is a full, final, and binding resolution between  
5 ERC, on behalf of itself and in the public interest, and Healthwest, of any alleged  
6 violation of Proposition 65 or its implementing regulations for failure to provide  
7 Proposition 65 warnings of exposure to lead from the handling, use, or consumption of  
8 the Covered Products and fully resolves all claims that have been or could have been  
9 asserted in this action up to and including the Effective Date for failure to provide  
10 Proposition 65 warnings for the Covered Products as set forth in the Proposition 65  
11 Notice and the Complaint. ERC, on behalf of itself and in the public interest, hereby  
12 discharges Healthwest and its respective officers, directors, shareholders, employees,  
13 agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees,  
14 licensees, customers (not including private label customers of Healthwest), distributors,  
15 wholesalers, retailers, and all other upstream and downstream entities in the  
16 distribution chain of any Covered Product, and the predecessors, successors and  
17 assigns of any of them (collectively, the "Released Parties"), from any claims, actions,  
18 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and  
19 expenses asserted, or that could have been asserted, as to any alleged violation of  
20 Proposition 65 arising from the failure to provide Proposition 65 warnings regarding  
21 lead in the Covered Products as set forth in the Proposition 65 Notice and the  
22 Complaint.  
23

24 7.2. ERC, on behalf of itself only, hereby releases and discharges the  
25 Released Parties from all known and unknown claims for alleged violations of  
26 Proposition 65 arising from or relating to alleged exposures to lead in the  
27 Covered Products as set forth in the Proposition 65 Notice and the Complaint. It is  
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1 possible that other claims not known to the Parties arising out of the facts alleged in the  
2 Proposition 65 Notice or the Complaint and relating to the Covered Products will  
3 develop or be discovered. ERC, on behalf of itself only, acknowledges that this  
4 Consent Judgment is expressly intended to cover and include all such claims, including  
5 all rights of action therefore. ERC has full knowledge of the contents of California  
6 Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the claims  
7 released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless  
8 waives California Civil Code section 1542 as to any such unknown claims. California  
9 Civil Code section 1542 reads as follows:

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

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 7.3. Compliance with the terms of this Consent Judgment shall be deemed to  
19 constitute compliance by any Released Party with Proposition 65 regarding alleged  
20 exposures to lead in the Covered Products as set forth in the Proposition 65 Notice and  
21 the Complaint.

22 7.4. ERC and Healthwest each release and waive all claims they may have  
23 against each other for any statements or actions made or undertaken by them in  
24 connection with the Proposition 65 Notice or the Complaint; provided, however, that  
25 nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms  
26 of this Consent Judgment.

27 **8. Motion for Approval of Consent Judgment/Notice to the California Attorney**  
28

1 **General's Office.** Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a  
2 Motion for Approval & Entry of Consent Judgment in the Alameda County Superior Court  
3 pursuant to 11 California Code of Regulations §3000, *et seq.* This motion shall be served upon  
4 all of the Parties to the Action and upon the California Attorney General. In the event that the  
5 Court fails to approve and order entry of the judgment within one (1) year of the Consent  
6 Judgment being filed, this Consent Judgment shall become null and void upon the election of any  
7 Party as to them and upon written notice to all of the Parties to the Action pursuant to the notice  
8 provisions herein. Defendant and ERC shall use their best efforts to support entry of this  
9 Consent Judgment in the form submitted to the California Attorney General. If the Attorney  
10 General or the Court objects in writing to any term in this Consent Judgment, the Parties shall  
11 use their best efforts to resolve the concern in a timely manner, prior to the hearing on the motion  
12 to approve this Consent Judgment. If the Attorney General elects to file papers with the Court  
13 stating that the People shall appear at the hearing for entry of this Consent Judgment so as to  
14 oppose entry of the Consent Judgment, then a Party may withdraw from this Consent Judgment  
15 prior to the date of the hearing, with notice to all Parties and the Attorney General, and upon  
16 such notice this Consent Judgment shall be null and void and any payments made pursuant to  
17 this Consent Judgment shall be promptly returned to Defendant.  
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20 9. **Severability.** In the event that any of the provisions of this Consent Judgment  
21 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
22 adversely affected.

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

27 11. **Governing Law.** The terms of this Consent Judgment shall be governed by the  
28 laws of the State of California.

1           12.   **Notices.** All correspondence and notices required to be provided under this  
2 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail  
3 addressed as follows. All correspondence to ERC shall be mailed to:

4                   Chris Heptinstall, Executive Director  
5                   Environmental Research Center  
6                   3111 Camino Del Rio North, Suite 400  
7                   San Diego, CA 92108

8                   **With a copy to:**

9                   Michael Freund  
10                   1919 Addison St., Suite 015  
11                   Berkeley, CA 94704  
12                   Ph: (510) 540-1992  
13                   Fax: (510) 540-5543  
14                   Email: freund1@aol.com

15           All correspondence to Defendant shall be mailed to:

16                   Joe Stout, M.S., President  
17                   Healthwest Minerals, Inc.  
18                   279 S.W. 9<sup>th</sup> Street  
19                   Chehalis, WA 98532  
20                   Ph: (800) 574-1961  
21                   Fax: (360) 748-3099  
22                   Email: joe@mtcapra.com

23                   Joshua A. Bloom  
24                   Barg Coffin Lewis & Trapp, LLP  
25                   350 California Street, 22nd Floor  
26                   San Francisco, CA 94104-1435  
27                   Ph: (415) 228-5406  
28                   Fax: (415) 228-5450  
                    Email: jab@bcftlaw.com


29           13.   **Integration & Modification.** This Consent Judgment, together with the Exhibits  
30 hereto which are specifically incorporated herein by this reference, constitutes the entire  
31 agreement between the Parties relating to the rights and obligations herein granted and assumed,  
32 and supersedes all prior agreements and understandings between the Parties. This Consent

1 Judgment may be modified only upon the written agreement of the Parties.

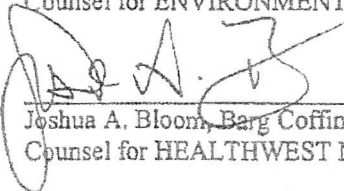
2 14. **Counterparts.** This Consent Judgment may be executed in counterparts, each of  
3 which shall be deemed an original, and all of which, when taken together, shall constitute one  
4 and the same document. Execution and delivery of this Agreement by facsimile transmission or  
5 other electronic means shall constitute legal and binding execution and delivery. Photocopies of  
6 the executed Agreement shall have the same force and effect as an Agreement bearing original  
7 signatures.

8  
9 15. **Authorization.** The undersigned are authorized to execute this Consent  
10 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the  
11 terms and conditions of this Consent Judgment.

12 **APPROVED AS TO FORM:**

13 DATED: 4/2/14 By: 

14 Michael Freund, Law Office of Michael Freund  
Counsel for ENVIRONMENTAL RESEARCH CENTER

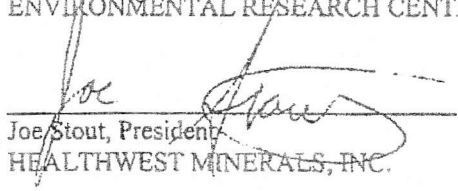
15 DATED: 2/20/14 By: 

16 Joshua A. Bloom, Berg Coffin Lewis & Trapp, LLP  
17 Counsel for HEALTHWEST MINERALS, INC.

18 **APPROVED AS TO SUBSTANCE:**

19 DATED: 4/1/2014 By: 

20 Chris Hepburn, Executive Director  
21 ENVIRONMENTAL RESEARCH CENTER

22 DATED: 3-28-14 By: 

23 Joe Stout, President  
24 HEALTHWEST MINERALS, INC.

25 **IT IS SO ORDERED**

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

27 \_\_\_\_\_  
28 Judge of the Superior Court

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**EXHIBIT A**

**Product List**

**Group 1 Covered Products (Initial Proposition 65 Notice):**

Yo-Quick! Sensational Strawberry Goat Milk Yogurt  
Capra Mineral Whey  
CapraGreens  
Caprotein  
Deep<sup>2</sup>30 Strawberry Splash  
Double Bonded Protein Dark Chocolate  
CapraFlex  
CapraCleanse  
CapraZyme

**Group 2 Covered Products (Second Proposition 65 Notice):**

Deep<sup>2</sup>30 Banana  
Deep<sup>2</sup>30 Coconut

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**EXHIBIT B**  
**Initial Proposition 65 Notice of Violation**

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

May 17, 2013

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

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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

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

**Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese**

**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:

**Mt. Capra Products Yo-Quick! Sensational Strawberry Goat Milk Yogurt – Lead**  
**Mt. Capra Products Capra Mineral Whey – Lead**  
**Mt. Capra Products CapraGreens – Lead**  
**Mt. Capra Products Caprotein – Lead**  
**Mt. Capra Deep2 30 Strawberry Splash – Lead**  
**Mt. Capra Products Double Bonded Protein Dark Chocolate – Lead**  
**Mt. Capra Products CapraFlex – Lead**  
**Mt. Capra Products CapraCleanse – Lead**  
**Mt. Capra Products CapraZyme**

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 May 17, 2010, 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.

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

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese 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 Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 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 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 17, 2013



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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 May 17, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Healthwest Minerals, Inc.  
114 W Magnolia  
Centralia, WA 98531

T. Charles Althausser  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
114 W Magnolia  
Centralia, WA 98531

Current President or CEO  
Healthwest Minerals, Inc.  
PO Box 210  
Centralia, WA 98531

Frank T. Stout  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

Current President or CEO  
Healthwest Minerals, Inc.  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

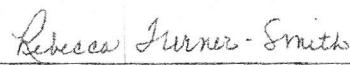
Current President or CEO  
Mt. Capra Cheese  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

On May 17, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on May 17, 2013, in Fort Oglethorpe, Georgia.

  
Rebecca Turner-Smith

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

May 17, 2013

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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 <sup>nd</sup> 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 <sup>rd</sup> 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 <sup>rd</sup> 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 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, 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 5 <sup>th</sup> Street 4 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

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**EXHIBIT C**  
**Second Proposition 65 Notice of Violation**

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

September 13, 2013

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

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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator: identified below.

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

Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese

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:

Mt. Capra Products Deep2 30 Coconut Dream -- Lead  
Mt. Capra Products Deep2 30 Banana Smoothie -- 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

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

September 13, 2013

Page 2

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 September 13, 2010, 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.

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

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese and its Registered Agent for Service of Process only)

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

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 September 13, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Healthwest Minerals, Inc.  
114 W Magnolia  
Centralia, WA 98531

T. Charles Althausen  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
114 W Magnolia  
Centralia, WA 98531

Current President or CEO  
Healthwest Minerals, Inc.  
PO Box 210  
Centralia, WA 98531

Frank T. Stout  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

Current President or CEO  
Healthwest Minerals, Inc.  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

Current President or CEO  
Mt. Capra Cheese  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

On September 13, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On September 13, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on September 13, 2013, in Fort Oglethorpe, Georgia.

  
Tiffany Capehart



CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: September 13, 2013



Michael Freund

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

September 13, 2013

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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
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