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8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER

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11 BARG COFFIN LEWIS & TRAPP, LLP
12 350 California Street, 22nd Floor
13 San Francisco, CA 94104-1435
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15 Fax: (415) 228-5450
16 Email: jab@bcltlaw.com

17 Attorneys for Defendant
18 IDEAL SHAPE, LLC

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 IDEAL SHAPE, LLC., a Utah corporation,)

26 Defendant.)

Case No. RG13704155

[PROPOSED] STIPULATED CONSENT

JUDGMENT; [PROPOSED] ORDER

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

Dept: 514

Action Filed: November 18, 2013

Trial Date: None set

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. IDEAL SHAPE, LLC is a Utah corporation, and is referred to hereinafter as “**Ideal**
7 **Shape**” or “**Defendant**”. ERC and Ideal Shape are referred to individually as a “**Party**” and
8 collectively as the “**Parties**”.

9 C. The Products covered under this Consent Judgment are set forth in **Exhibit A**,
10 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 at least May 17, 2010, as well as every day since the products were introduced into the
18 California marketplace.

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

8
9 H. On November 18, 2013, ERC filed a Complaint against Defendant in the Alameda
10 County Superior Court, alleging violations of Proposition 65, based on the Initial Proposition 65
11 Notice. That Complaint was filed by ERC in the public interest at least sixty (60) days after
12 ERC provided notice of the alleged Proposition 65 violations to Defendant and the public
13 enforcement agencies and none of the public enforcement agencies had commenced and/or
14 begun diligently prosecuting an action against Defendant for such violations. On April 21, 2014,
15 ERC filed a First Amended Complaint alleging violations of Proposition 65, based on the Initial
16 and Second Proposition 65 Notices (the “Action”). This Action is brought by ERC in the public
17 interest at least sixty (60) days after ERC provided notice of the alleged Proposition 65 violations
18 to Defendant and the public enforcement agencies and none of the public enforcement agencies
19 had commenced and/or begun diligently prosecuting an action against Defendant for such
20 violations.

21
22 I. For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over Defendant as to the allegations contained in the Amended Complaint, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and
25 enforce the provisions of this Consent Judgment. This Consent Judgment shall have no
26 application or effect on Defendant for Covered Products or other products distributed or sold by
27 Defendant to consumers outside of the State of California only.

28 J. Defendant denies the material, factual and legal allegations contained in Plaintiff’s

1 Amended Complaint and maintains that all Covered Products that Defendant sold and distributed
2 in California have been and are in compliance with all laws, including Proposition 65. The
3 Parties enter into this Consent Judgment pursuant to a settlement of disputed claims between
4 them as alleged in the Amended Complaint for the purposes of avoiding prolonged and costly
5 litigation. By execution of this Consent Judgment, Defendant does not admit any facts or
6 conclusions of law suggesting or demonstrating any violations or the applicability of
7 Proposition 65, or any other statutory, common law or equitable requirements relating to the
8 Covered Products. Nothing in this Consent Judgment shall be construed as an admission by
9 Defendant or Plaintiff of any fact, issue of law, or violation of law, nor shall compliance with
10 this Consent Judgment constitute or be construed as an admission by Defendant or Plaintiff of
11 any fact, issue of law, or violation of law.
12

13 K. Except as expressly provided herein, nothing in this Consent Judgment shall
14 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or
15 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
16 responsibilities, and duties of any Party to this Consent Judgment.
17

18 L. The "**Effective Date**" of this Consent Judgment shall be the date upon which this
19 Consent Judgment is entered by the Court; and,
20

21 M. Defendant represents that during periods when the Covered Products were placed
22 in the stream of commerce it was a "person in the course of doing business," as that term is
23 defined in Health and Safety Code Section 25249.11(b), because it employed 10 or more
24 employees.
25

26 **NOW, THEREFORE**, in consideration of the promises, covenants and agreements
27 herein contained, the sufficiency and adequacy of which is hereby acknowledged by the Parties:
28

1. **Injunctive Relief.** Beginning on the Effective Date, Defendant shall not manufacture for

1 sale in the State of California, distribute into the State of California¹, or directly sell in the State
2 of California any Covered Product for which the maximum dose recommended on the label
3 contains more than 0.5 micrograms (**mcg**) of lead, as calculated in accordance with the formula
4 set forth in Section 4, unless each individual Covered Product (in the form intended for sale to
5 the end-user) bears one of the warning statements specified below on its individual unit label or
6 unit packaging. Within 45 days of the Effective Date, Defendant shall provide ERC with
7 information adequate to enable ERC to identify Covered Products for sale in California
8 manufactured after the Effective Date, *e.g.*, without limitation, lot numbers and/or expiration
9 dates.
10

11 2. Beginning on the Effective Date, for Covered Products for which the maximum
12 dose recommended on the label contains more than 0.5 mcg of lead, Defendant shall, at the point
13 of manufacture, prior to Defendant's shipment to California, or prior to Defendant's distribution
14 within California, affix to or print on the Covered Product's container, cap, label, or unit package
15 the following warning:

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

18 The term "cancer and" shall be included in the warning only if the maximum recommended dose
19 stated on the Covered Product's label contains more than 15 micrograms (mcg) of lead as
20 calculated in accordance with the formula set forth in Section 4 below.
21

22 The warning required by this Section 2 shall be prominently affixed to or printed on the
23 labeling of each Covered Product intended for sale to a purchaser in the State of California, with
24 such conspicuousness, as compared with other words, statements, designs, or devices on the
25 labeling as to render it likely to be read and understood by an ordinary individual under
26 customary conditions of purchase or use. With regard to the sale of the Covered Product via the
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28 ¹ As used in this Consent Judgment, the term "distribute into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Defendant knows will sell the Covered Product in California.

1 Internet, the warning stated in this Section 2 shall be given (a) on the same web page on which
2 the Covered Product is displayed; (b) on the same web page as the order form for the Covered
3 Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web
4 pages displayed to a purchaser during the checkout process before purchase is complete. The
5 internet warning shall be used and shall appear in any of the above instances adjacent to or
6 immediately following the display, description, or price of the Covered Product for which it is
7 given in the same type size or larger than the Covered Product's description text.

8 3. The warning shall not exceed the language specified in Section 2 above, and shall
9 not be accompanied by any explanation of Proposition 65, lead, or the "naturally occurring"
10 exemption. If the warning is displayed on the Covered Product's container or labeling, the
11 warning shall be at least the same size as the largest of any other health or safety warnings on the
12 container or labeling, and the word "**WARNING**" shall be in all capital letters and in bold print.
13 If printed on the labeling itself, the warning shall be contained in the same section of the labeling
14 that states other safety warnings concerning the use of the Covered Product. The injunctive
15 relief set forth in Sections 1, 2 and 3 shall not apply to any of the Covered Products that
16 Defendant put into the stream of commerce before the Effective Date.

17 4. Defendant may reformulate the Covered Products to reduce the lead content to
18 below levels requiring a Proposition 65 warning, in which case the Parties agree that the Covered
19 Products may be offered for sale in California without the warnings discussed in this Consent
20 Judgment. If Defendant contends that a Covered Product has been so reformulated, then at least
21 once each year for three consecutive years, Defendant shall undertake testing of any
22 reformulated Covered Product on which it does not intend to place a warning label discussed in
23 Section 2 above. Defendant shall arrange for the testing of at least five (5) randomly-selected
24 samples of each such reformulated Covered Product for lead content, to confirm whether the
25 daily dose is more or less than 0.5 micrograms of lead when the maximum recommended daily
26 dose is taken as directed on the reformulated Covered Product's label. For purposes of
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1 determining whether a warning, if any, is required pursuant to Section 1, the second-highest lead
2 detection result of the five (5) randomly selected samples of the reformulated Covered Product
3 will be controlling. For purposes of this Consent Judgment, daily lead exposure levels shall be
4 measured in micrograms and shall be calculated using the following formula: micrograms of lead
5 per gram of product, multiplied by grams of product per serving of the product (using the largest
6 serving size appearing on the product's label), multiplied by servings of the product per day
7 (using the largest serving size appearing on the product's label), which equals micrograms of
8 lead exposure per day. All testing pursuant to this Consent Judgment shall be performed by an
9 independent third-party laboratory certified by the California Environmental Laboratory
10 Accreditation Program for analysis of heavy metals or an independent third-party laboratory that
11 is registered with the United States Food & Drug Administration. The method of selecting
12 samples for testing must comply with the regulations of the Food and Drug Administration as set
13 forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section
14 111.80(c). All testing pursuant to this Consent Judgment shall be performed using a laboratory
15 method that complies with the performance and quality control factors appropriate for the
16 method used, including limit of detection, limit of qualification, accuracy, and precision and
17 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
18 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
19 method subsequently agreed upon in writing by the Parties. Nothing in this Consent Judgment
20 shall limit Defendant's ability to conduct, or require that others conduct, additional testing of the
21 Covered Products, reformulated or otherwise, including the raw materials used in their
22 manufacture. This Consent Judgment, including the testing and sampling methodology set forth
23 in this Section, is the result of negotiation and compromise, and is accepted by the Parties for
24 purposes of settling, compromising, and resolving issues disputed in this action, including future
25 compliance by Defendant with this Consent Judgment, and shall not be used for any other
26 purpose, or in any other matter and, except for the purpose of determining future compliance
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1 with this Consent Judgment, shall not constitute an adoption or employment of a method of
2 analysis for a listed chemical in a specific medium as set forth in 27 California Code of
3 Regulations § 25900(g). For the three-year reporting period, Defendant shall send test results
4 and documentation for any reformulated Covered Product to ERC within twenty (20) days of
5 Defendant's receipt of the test results, and shall retain all test results and documentation for a
6 period of four (4) years from the date of each test.

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

11 6. **Payments.** In full satisfaction of all potential civil penalties, payment in lieu of
12 civil penalty, and attorneys' fees and costs, Defendant shall make a total payment of \$58,000.00,
13 as follows:

14 6.1. **Civil Penalty Assessment.** Defendant agrees to pay a civil penalty in the
15 amount of \$10,600.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff shall
16 remit 75% of this amount \$7,950.00 to the State of California pursuant to Health &
17 Safety Code §25192, and Plaintiff shall retain the remaining 25% of this amount
18 \$2,650.00.

19
20 6.2. **Payment In Lieu of Further Civil Penalties.** Defendant agrees to make an
21 additional payment in lieu of further civil penalties in the amount of \$15,404.00 for the
22 day-to-day business activities such as (1) continued enforcement of Proposition 65,
23 which includes work, analyzing, researching and testing consumer products that may
24 contain Proposition 65 chemicals, focusing on the same or similar type of ingestible
25 products that are the subject matter of the current action; (2) the continued monitoring of
26 past consent judgments and settlements to ensure companies are in compliance with
27 Proposition 65; and (3) giving a donation of \$795.00 to the Natural Resources Defense
28 Council to address reducing toxic chemical exposures in California.

1 **6.3. Reimbursement of Plaintiff's Fees and Costs.** Defendant agrees to
2 reimburse Plaintiff's reasonable costs of \$22,104.00 incurred for (A) reasonable costs
3 associated with the enforcement of Proposition 65 and other costs incurred as a result of
4 work in bringing 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. \$2,525.00 shall be payable to Michael Freund of Michael Freund & Associates
7 for ERC's attorney's fees. \$7,367.00 shall be payable to Ryan Hoffman of Michael
8 Freund & Associates for ERC's attorney's fees.
9

10 **6.4. Payment Schedule.** Pursuant to Sections 6.1., 6.2., and 6.3. herein,
11 Defendant agrees to remit the total amount of \$58,000.00 to Plaintiff, by check or money
12 order payable to Michael Freund & Associates. Defendant shall remit payment in full
13 within thirty (30) calendar days of the Effective Date. Prior to such date, ERC shall
14 provide to Ideal Shape taxpayer identification numbers for the payees set forth above.
15

16 **7. Binding Effect, Claims Covered and Released**

17 7.1. This Consent Judgment is a full, final, and binding resolution between ERC,
18 on behalf of itself and in the public interest, and Ideal Shape, of any alleged violation of
19 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings
20 of exposure to lead from the handling, use, or consumption of the Covered Products and fully
21 resolves all claims that have been or could have been asserted in this action up to and
22 including the Effective Date for failure to provide Proposition 65 warnings for the Covered
23 Products as set forth in the Proposition 65 Notice and the Complaint. ERC, on behalf of itself
24 and in the public interest, hereby discharges Ideal Shape and its respective officers, directors,
25 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
26 suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other
27 upstream and downstream entities in the distribution chain of any Covered Product, and the
28 predecessors, successors, and assigns of any of them, and excluding private label customers

1 of Ideal Shape (collectively, the “Released Parties”), from any claims, actions, causes of
2 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or
3 that failure to provide Proposition 65 warnings regarding lead in the Covered Products as set
4 forth in the Proposition 65 Notice and Complaint.

5 7.2. ERC, on behalf of itself only, hereby releases and discharges the Released
6 Parties from all known and unknown claims for alleged violations of Proposition 65 arising
7 from or relating to alleged exposures to lead in the Covered Products as set forth in the
8 Proposition 65 Notice and Complaint up to and including the Effective Date. It is possible
9 that other claims not known to the Parties arising out of the facts alleged in the Proposition
10 65 Notice or the Complaint and relating to the Covered Products will develop or be
11 discovered. ERC, on behalf of itself only, acknowledges that this Consent Judgment is
12 expressly intended to cover and include all such claims, including all rights of action
13 therefore. ERC has full knowledge of the contents of California Civil Code section 1542.
14 ERC, on behalf of itself only, acknowledges that the claims released in Section 7.1 above and
15 this Section 7.2 may include unknown claims, and nevertheless waives California Civil Code
16 1542 as to any such unknown claims. California Civil Code 1542 reads as follows:
17

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

22 ERC, on behalf of itself only, acknowledges and understands the significance and
23 consequences of this specific waiver of California Civil Code 1542.
24

25 7.3. Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance by any Released Party with Proposition 65 regarding alleged
27 exposures to lead in the Covered Products as set forth in the Proposition 65 Notice and the
28 Complaint.

1 7.4. ERC and Ideal Shape each release and waive all claims they may have
2 against each other for any statements or actions made or undertaken by them in connection
3 with the Proposition 65 Notice or the Complaint; provided, however, that nothing in Section
4 7 shall affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

5 7.5. Nothing in this Release is intended to apply to any occupational or
6 environmental exposures arising under Proposition 65, not shall it apply to any of
7 Defendant’s products other than the Covered Products.

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

27
28 9. **Severability.** In the event that any of the provisions of this Consent Judgment are

1 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
2 adversely affected.

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

7
8 11. **Governing Law.** The terms and conditions of this Consent Judgment shall be
9 governed by and construed in accordance with the laws of the State of California.

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

13 Chris Heptinstall, Executive Director
14 Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

16 With a copy to:

17
18 Ryan Hoffman
19 Michael Freund & Associates
20 1919 Addison St., Suite 105
Berkeley, CA 94704
21 Ph: (510) 540-1992
Fax: (510) 540-5543
Email: rrhoffma@gmail.com

22 All correspondence to Defendant shall be mailed to:

23
24 David Meine
25 CEO
26 Ideal Shape, LLC
176 Dry Canyon
27 Lindon, UT 84042
Ph: 801-228-0018
28 Email: david@idealshape.com

1 With a copy to:

2 Joshua A. Bloom
3 Barg Coffin Lewis & Trapp, LLP
4 350 California Street, 22nd Floor
5 San Francisco, CA 94104-1435
6 Ph: (415) 228-5406
7 Fax: (415) 228-5450
8 Email: jab@bcltlaw.com

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

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

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

23 [The Remainder Of This Page Intentionally Left Blank]
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APPROVED AS TO FORM:

DATED: _____ By: _____
Ryan Hoffman, Michael Freund & Associates
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By: _____
Joshua A. Bloom, Barg Coffin Lewis & Trapp, LLP
Counsel for IDEAL SHAPE, LLC

APPROVED AS TO SUBSTANCE:

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

DATED: 5/1/2014 By: David Meine
David Meine, CEO
IDEAL SHAPE, LLC

IT IS SO ORDERED

Dated: _____

Judge of the Superior Court

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APPROVED AS TO FORM:

DATED: _____ By: _____

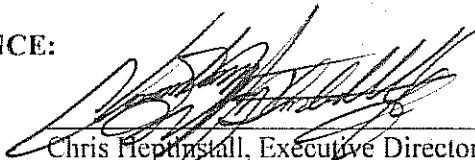
Ryan Hoffman, Michael Freund & Associates
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By: _____

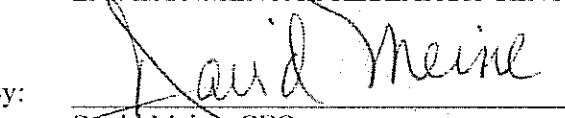
Joshua A. Bloom, Barg Coffin Lewis & Trapp, LLP
Counsel for IDEAL SHAPE, LLC

APPROVED AS TO SUBSTANCE:

DATED: 5/7/2014 By: _____


Chris Neptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: 5/1/2014 By: _____


David Meine, CEO
IDEAL SHAPE, LLC

IT IS SO ORDERED

Dated: _____

Judge of the Superior Court

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APPROVED AS TO FORM:

DATED: 5/7/14 By: _____



Ryan Hoffman, Michael Freund & Associates
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By: _____

Joshua A. Bloom, Barg Coffin Lewis & Trapp, LLP
Counsel for IDEAL SHAPE, LLC

APPROVED AS TO SUBSTANCE:

DATED: _____ By: _____

Chris Heptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: _____ By: _____

David Meine, CEO
IDEAL SHAPE, LLC

IT IS SO ORDERED

Dated: _____

Judge of the Superior Court

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APPROVED AS TO FORM:

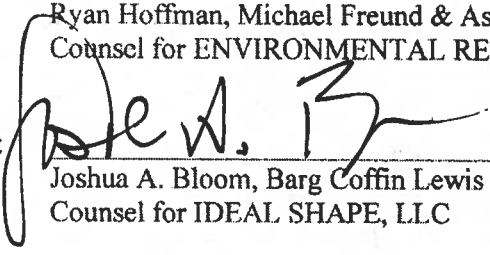
DATED: _____

By: _____

Ryan Hoffman, Michael Freund & Associates
Counsel for ENVIRONMENTAL RESEARCH CENTER

DATED: 5/7/14

By: _____


Joshua A. Bloom, Barg Coffin Lewis & Trapp, LLP
Counsel for IDEAL SHAPE, LLC

APPROVED AS TO SUBSTANCE:

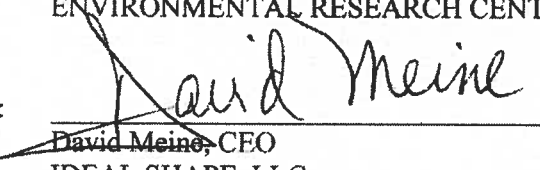
DATED: _____

By: _____

Chris Heptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: 5/1/2014

By: _____


~~David Meine~~, CEO
IDEAL SHAPE, LLC

IT IS SO ORDERED

Dated: _____

Judge of the Superior Court

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EXHIBIT A

Covered Product List

Group 1 Covered Products (Initial Proposition 65 Notice):

- Ideal Shake Meal Replacement Shake – Chocolate
- Ideal Shake Meal Replacement Shake – Vanilla
- Ideal Bar Enhanced Hunger Blocker – Double Chocolate

Group 2 Covered Products (Second Proposition 65 Notice):

- Ideal Bar Enhanced Hunger Blocker – Cinnamon Caramel Crunch

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EXHIBIT B
Initial Proposition 65 Notice of Violation

LAW OFFICE OF
MICHAEL FREUND

RYAN HOFFMAN
ATTORNEY AT LAW
1919 ADDISON STREET, SUITE 105
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-5543
EMAIL RRHOFFMA@GMAIL.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:

Ideal Shape, LLC

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

IdealShape LLC Ideal Shape Ideal Shake Meal Replacement Shake Chocolate – Lead
IdealShape LLC Ideal Shape Meal Replacement Shake Vanilla – Lead
IdealShape LLC Ideal Bar Enhanced Hunger Blocker Double Chocolate – 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.

May 17, 2013

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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,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Ideal Shape, LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Ideal Shape, LLC

I, Ryan Hoffman, 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



Ryan Hoffman

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
Ideal Shape, LLC
921 West 500 North
Lindon, UT 84042

David A. Meine
(Ideal Shape, LLC’s Registered
Agent for Service of Process)
176 Dry Canyon
Lindon, UT 84042

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 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 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney 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	

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EXHIBIT C
Second Proposition 65 Notice of Violation

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

December 13, 2013

**NOTICE OF VIOLATION 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:

Ideal Shape, LLC

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

IdealShape LLC Ideal Bar Enhanced Hunger Blocker Cinnamon Caramel Crunch – 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 this product. 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 December 13, 2010, as well as every day since the product was 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 product. 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 this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead or at rrhoffma@gmail.com.**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Ideal Shape, LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Ideal Shape, LLC

I, Ryan Hoffman, 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: December 13, 2013



Ryan Hoffman

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 December 13, 2013, I served the following documents: **NOTICE OF VIOLATION 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
Ideal Shape, LLC
921 West 500 North
Lindon, UT 84042

David A. Meine
(Ideal Shape, LLC’s Registered Agent for Service of Process)
176 Dry Canyon
Lindon, UT 84042

On December 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 December 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 December 13, 2013, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

December 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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