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12 GENUINE HEALTH CORPORATION, GENUINE  
HEALTH, INC. and 1064510 ONTARIO LIMITED

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA

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

18 Plaintiff,

19 v.

20 GENUINE HEALTH CORPORATION,  
21 GENUINE HEALTH, INC. and 1064510  
ONTARIO LIMITED,

22 Defendants.  
23

CASE NO. RG15759481

STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 23, 2015

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On February 23, 2015, Plaintiff Environmental Research Center (“ERC”), a  
27 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
28 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
2 against GENUINE HEALTH CORPORATION, GENUINE HEALTH, INC. and 1064510  
3 ONTARIO LIMITED (collectively, “GENUINE HEALTH”). In this action, ERC alleges that  
4 a number of products manufactured, distributed or sold by GENUINE HEALTH contain lead, a  
5 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
7 (referred to hereinafter individually as a “Notice of Violation I Product” or collectively as  
8 “Notice of Violation I Products”) are: (1) Genuine Health 6 Hour Extra Energy (also known as  
9 Genuine Health extra energy); (2) Genuine Health Go4Trim; (3) Genuine Health Vegan Proteins+  
10 Natural Vanilla; (4) Genuine Health ActivFuel+ Black Raspberry Lemonade; (5) Genuine Health  
11 Proteins+ Instant Smoothie A Day Natural Orange Cream; (6) Genuine Health Vegan Proteins+  
12 Natural Strawberry Vanilla Smoothie; (7) Genuine Health ActivRecover+ Sports Nutrition  
13 Orange; (8) Genuine Health Vegan Proteins+ Double Chocolate (also known as Genuine Health  
14 Vegan Proteins+ Natural Chocolate); (9) Genuine Health Healthy Skin Chocolate Soft Chews;  
15 (10) Genuine Health Fast Back+ Care (also known as Genuine Health fast muscle+ care); (11)  
16 Genuine Health Fermented Whole Body Nutrition Acai Mango Natural Flavor; and (12) Genuine  
17 Health Fermented Whole Body Nutrition Natural Flavor.

18 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,  
19 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
20 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
21 encouraging corporate responsibility.

22 **1.3** ERC and GENUINE HEALTH are referred to individually as a “Party” or  
23 collectively as the “Parties.”

24 **1.4** For purposes of this Consent Judgment, the Parties agree that GENUINE  
25 HEALTH is a business entity that has employed ten or more persons at all times relevant to this  
26 action, and qualifies as a “person in the course of business” within the meaning of Proposition 65.  
27 GENUINE HEALTH manufactures, distributes and sells the Covered Products.

28 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation

1 dated May 23, 2014, that was served on the California Attorney General, other public  
2 enforcers, and GENUINE HEALTH (“Notice”). A true and correct copy of the Notice is  
3 attached as Exhibit A and is hereby incorporated by reference. More than sixty days have  
4 passed since the Notice was mailed and uploaded to the Attorney General’s website, and no  
5 designated governmental entity has filed a complaint against GENUINE HEALTH with regard  
6 to the Notice of Violation I Products or the alleged violations.

7 **1.6** ERC’s Notice and Complaint allege that use of the Notice of Violation I  
8 Products exposes persons in California to lead without first providing clear and reasonable  
9 warnings in violation of California Health and Safety Code section 25249.6. GENUINE  
10 HEALTH denies all material allegations contained in the Notice and Complaint.

11 **1.7** On or about September 21, 2015, ERC will issue a second Notice of Violation  
12 regarding the following additional products: (1) Genuine Health fermented Vegan proteins+  
13 Unsweetened and Unflavored; (2) Genuine Health fermented Vegan proteins+ Natural Vanilla; (3)  
14 Genuine Health fermented Vegan proteins+ Natural Chocolate; (4) Genuine Health fermented  
15 Vegan proteins+ bars Lemon Coconut; (5) Genuine Health fermented Vegan proteins+ bars Dark  
16 Chocolate Almond; (6) Genuine Health abs+; (7) Genuine Health lean+ extra strength; (8) Genuine  
17 Health perfect skin dry skin (also known as Genuine Health dermalipid); (9) Genuine Health  
18 proteins+ Natural Vanilla; (10) Genuine Health proteins+ Natural Chocolate; (collectively the  
19 “Notice of Violation II Products”). The Notice of Violation I products and Notice of Violation II  
20 products are hereinafter referred to as “Covered Products.”

21 **1.8** The Parties stipulate and agree that Plaintiff may have leave of Court to file an  
22 Amended Complaint to include the Notice of Violation II Products once the sixty day notice  
23 period has expired for the second Notice of Violation.

24 **1.9** The Parties have entered into this Consent Judgment in order to settle,  
25 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing  
26 in this Consent Judgment shall constitute or be construed as an admission by any of the Parties,  
27 or by any of their respective officers, directors, shareholders, employees, agents, parent  
28 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,

1 distributors, wholesalers, or retailers. Except for the representations made above, nothing in this  
2 Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law, or  
3 violation of law, nor shall compliance with this Consent Judgment be construed as an admission  
4 by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose.

5 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall  
6 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
7 other or future legal proceeding unrelated to these proceedings.

8 **1.11** The Effective Date of this Consent Judgment is the date on which it is entered as  
9 a Judgment by this Court.

10 **2. JURISDICTION AND VENUE**

11 For purposes of this Consent Judgment and any further court action that may become  
12 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
13 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
14 over GENUINE HEALTH as to the acts alleged in the Complaint, that venue is proper in  
15 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
16 final resolution of all claims up through and including the Effective Date which were or could  
17 have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

19 **3.1** Beginning six months from the Effective Date (“Compliance Date”),  
20 GENUINE HEALTH shall be permanently enjoined from manufacturing for sale in the State of  
21 California, “Distributing into the State of California,” or directly selling in the State of  
22 California, any Covered Product which exposes a person to a “Daily Exposure Level” of more  
23 than 0.5 micrograms of lead per day when the maximum suggested dose is taken as directed on  
24 the Covered Product’s label, unless the requirements of Section 3.2 are met.

25 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
26 of California” shall mean to directly ship a Covered Product into California for sale in  
27 California or to sell a Covered Product to a distributor that GENUINE HEALTH knows will  
28 sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day, excluding amounts of naturally occurring lead in the ingredients listed in the table below.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium	0.8 micrograms/1000 milligrams
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

### 3.2 Clear and Reasonable Warnings

If GENUINE HEALTH is required to provide a warning pursuant to Section 3.1, the following warning must be utilized:

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

GENUINE HEALTH shall use the phrase “cancer and” in the warning only if the maximum daily dose recommended on the label contains more than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4.

If after the Compliance Date, OEHHA modifies its Article 6 regulations for “Clear and Reasonable Warnings”, 27 C.C.R. sections 25601 *et seq.*, such that new safe harbor warning

1 language is provided GENUINE HEALTH, its retailers, or distributors may use the warnings in  
2 compliance with the new regulations, notwithstanding the terms of this Consent Judgment. Before  
3 providing modified warnings under this section, Genuine Health shall notify ERC in writing of its  
4 proposed changes and permit ERC an opportunity to meet and confer.

5 **3.2.1.** If GENUINE HEALTH, its distributors, or its retailers are required to provide a  
6 warning pursuant to Section 3.1, one of the following warning methods must be utilized, subject to  
7 the limitations below, by GENUINE HEALTH or its distributors and retailers:

8 (A) Packaging Warning: The warning shall be securely affixed to or printed upon the  
9 container or label of each Covered Product. The warning shall be at least the same  
10 size as the smallest of any other health or safety warnings also appearing on the label  
11 or container of GENUINE HEALTH's product packaging.

12 (B) Shelf Warning: The warning shall be product-specific and securely affixed to or  
13 printed upon a shelf, shelf-tag, post, or railing at each point of display displayed prior  
14 to the point-of-sale at the retail outlet with such conspicuousness, as compared with  
15 other words, statements, designs, or devices in the label, labeling or display as to  
16 render it likely to be read and understood by an ordinary individual under customary  
17 conditions of purchase or use.

18 (C) Internet Warning: The warning must appear prior to completing checkout on the  
19 retailer's website when a California delivery address is indicated and with such  
20 conspicuousness, as compared with other words, statements, designs, or devices on  
21 the website as to render it likely to be read and understood by an ordinary individual  
22 under customary conditions of purchase or use.

### 23 **3.3 Reformulated Covered Products**

24 A "Reformulated Covered Product" is one for which the Daily Exposure Level when the  
25 maximum suggested dose is taken as directed on the Reformulated Covered Product's label,  
26 contains no more than 0.5 micrograms of lead per day as determined by the quality control  
27 methodology described in Section 3.4.

1           **3.4    Testing and Quality Control Methodology**

2           **3.4.1** Beginning within one year of the Effective Date, GENUINE HEALTH  
3 shall arrange for lead testing of the active (i.e. not discontinued for sale) Covered Products at  
4 least once a year for a minimum of three consecutive years by arranging for testing of three  
5 randomly selected samples of from any new lots (i.e. not tested previously) of each of the  
6 Covered Products, in the form intended for sale to the end-user, which GENUINE HEALTH  
7 intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
8 California or "Distributing into California." The testing requirement does not apply to any of  
9 the Covered Products for which a warning is provided as specified in Section 3.2.

10           **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the highest  
11 lead detection result of the three (3) randomly selected samples of the Covered Products will be  
12 controlling.

13           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
14 laboratory method that complies with the performance and quality control factors appropriate  
15 for the method used, including limit of detection, qualification, accuracy, and precision that  
16 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
17 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
18 method subsequently agreed to in writing by the Parties.

19           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
20 independent third party laboratory certified by the California Environmental Laboratory  
21 Accreditation Program or an independent third-party laboratory that is registered with the  
22 United States Food & Drug Administration.

23           **3.4.5** Nothing in this Consent Judgment shall limit GENUINE HEALTH's  
24 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
25 including the raw materials used in their manufacture.

26           **3.4.6** If at any time after the Compliance Date, ERC tests a Covered Product  
27 and the test results indicate that the daily exposure level for lead is greater than 0.5 micrograms  
28 per gram, GENUINE HEALTH agrees to confidentially supply to ERC within thirty (30) days

1 a list of ingredients, including the percentage of each ingredient (“Ingredient List”), of that  
2 particular Covered Product so that ERC may be able to calculate the daily exposure, including  
3 the amounts of lead deemed naturally occurring in the ingredients contained in the table in  
4 Section 3.1.2. If at any time GENUINE HEALTH refuses to provide said Ingredient List to  
5 ERC following a test result for lead of greater than 0.5 micrograms per gram, then GENUINE  
6 HEALTH’s forfeits the amounts of lead deemed naturally occurring in the ingredients  
7 contained in the table in Section 3.1.2 for that particular Covered Product.

8           **3.4.7** GENUINE HEALTH shall retain all test results and documentation for a  
9 period of three years from the date of each test.

10   **4. SETTLEMENT PAYMENT**

11           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
12 penalties, attorney’s fees, and costs, GENUINE HEALTH shall make a total payment of  
13 \$90,000.00 (ninety thousand USD)(“Total Settlement Amount”) to ERC paid in five  
14 consecutive monthly payments. The first payment of \$18,000.00 shall be due and owing within  
15 5 days of the Effective Date. The following four monthly payments of \$18,000.00 shall be due  
16 and owing on the same day of the month that the first payment was due. GENUINE HEALTH  
17 shall make these payments by wire transfer to ERC’s escrow account, for which ERC will give  
18 GENUINE HEALTH the necessary account information. The Total Settlement Amount shall  
19 be apportioned as follows:

20           **4.2** \$33,480.00 shall be considered a civil penalty pursuant to California Health and  
21 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$25,110.00) of the civil penalty to the  
22 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
23 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
24 Code §25249.12(c). ERC will retain the remaining 25% (\$8,370.00) of the civil penalty.

25           **4.3** \$3,034.70 shall be distributed to ERC as reimbursement to ERC for reasonable  
26 costs incurred in bringing this action.

27           **4.4** \$25,269.27 shall be distributed to ERC in lieu of further civil penalties, for the  
28 day-to-day business activities such as (1) continued enforcement of Proposition 65, which



1 includes work, analyzing, researching and testing consumer products that may contain  
2 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
3 the subject matter of the current action; and (2) the continued monitoring of past consent  
4 judgments and settlements to ensure companies are in compliance with Proposition 65; and  
5 (3) giving a donation of \$1,263.00 to the Center For Environmental Health to address reducing  
6 toxic chemical exposures in California.

7       **4.5**     \$14,210.00 shall be distributed to Attorney William F. Wraith as reimbursement  
8 of ERC's attorney's fees, while \$14,006.03 shall be distributed to ERC for its in-house legal  
9 fees.

## 10     **5.    MODIFICATION OF CONSENT JUDGMENT**

11       **5.1**     This Consent Judgment may be modified only (i) by written stipulation of the  
12 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
13 judgment.

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

26       **5.3**     Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and

1 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
2 means a party who is successful in obtaining relief more favorable to it than the relief that the  
3 other party was amenable to providing during the Parties' good faith attempt to resolve the  
4 dispute that is the subject of the modification.

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

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

9 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
10 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
11 inform GENUINE HEALTH in a reasonably prompt manner of its test results, including  
12 information sufficient to permit GENUINE HEALTH to identify the Covered Products at issue.  
13 GENUINE HEALTH shall, within forty-five (45) days following such notice, provide ERC  
14 with testing information, from an independent third-party laboratory meeting the requirements  
15 of Sections 3.4.1 and 3.4.2, demonstrating GENUINE HEALTH's compliance with the  
16 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to  
17 ERC taking any further legal action.

18 **7. APPLICATION OF CONSENT JUDGMENT**

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

25 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

26 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
27 behalf of itself and in the public interest, and GENUINE HEALTH, of any alleged violation of  
28 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of

1 exposure to lead from the handling, use, or consumption of the Covered Products and fully  
2 resolves all claims that have been or could have been asserted in this action up to and including  
3 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.  
4 ERC, on behalf of itself and in the public interest, hereby discharges GENUINE HEALTH and  
5 its respective officers, directors, shareholders, employees, agents, parent companies,  
6 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not including  
7 private label customers of GENUINE HEALTH), distributors, wholesalers, retailers, and all  
8 other upstream and downstream entities in the distribution chain of any Covered Product, and  
9 the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from  
10 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,  
11 fees, costs and expenses asserted, or that could have been asserted, as to any alleged violation  
12 of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered  
13 Products regarding lead.

14 **8.2** ERC on its own behalf only, on one hand, and GENUINE HEALTH on its own  
15 behalf only, on the other, further waive and release any and all claims they may have against  
16 each other for all actions or statements made or undertaken in the course of seeking or opposing  
17 enforcement of Proposition 65 in connection with the Notice or Complaint up through and  
18 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
19 any Party's right to seek to enforce the terms of this Consent Judgment.

20 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
21 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be  
22 discovered. ERC on behalf of itself only, on one hand, and GENUINE HEALTH, on the other  
23 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all  
24 such claims up through the Effective Date, including all rights of action therefore. ERC and  
25 GENUINE HEALTH acknowledge that the claims released in Sections 8.1 and 8.2 above may  
26 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
27 such unknown claims. California Civil Code section 1542 reads as follows:  
28

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

6 ERC on behalf of itself only, on the one hand, and GENUINE HEALTH, on the other hand,  
7 acknowledge and understand the significance and consequences of this specific waiver of  
8 California Civil Code section 1542.

9 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
10 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
11 in the Covered Products as set forth in the Notice and the Complaint.

12 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
13 environmental exposures arising under Proposition 65, nor shall it apply to any of GENUINE  
14 HEALTH's products other than the Covered Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

25 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

26 Chris Heptinstall, Executive Director, Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Tel: (619) 500-3090  
Email: chris\_erc501c3@yahoo.com

1 With a copy to:

2 WILLIAM F. WRAITH  
3 WRAITH LAW  
4 24422 Avenida de la Carlota, Suite 400  
5 Laguna Hills, CA 92653  
6 Tel: (949) 452-1234  
7 Fax: (949) 452-1102

8 **GENUINE HEALTH CORPORATION, GENUINE HEALTH, INC.**  
9 **and 1064510 ONTARIO LIMITED**

10 Tara Stubensey, Executive Vice President, Genuine Health  
11 317 Adelaide Street West, Suite 501  
12 Toronto, ON M5V 1P9  
13 Tel: (416) 646-1061  
14 Email: taras@genuinehealth.com

15 With a copy to:

16 GREG SPERLA  
17 GREENBERG TRAUIG, LLP  
18 1201 K Street, Suite 1100  
19 Sacramento, CA 95814-3938  
20 Tel: (916) 442-1111  
21 Fax: (916) 448-1709  
22 Email: sperlag@gtlaw.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible,  
prior to the hearing on the Motion for Court Approval.

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

**13. EXECUTION AND COUNTERPARTS**

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

1 the original signature.

2 **14. DRAFTING**

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

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

8 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
9 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to  
10 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of  
11 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is  
12 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As  
13 used in the preceding sentence, the term "prevailing party" means a party who is successful in  
14 obtaining relief more favorable to it than the relief that the other party was amenable to providing  
15 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement  
16 action.

17 **16. ENTIRE AGREEMENT, AUTHORIZATION**

18 **16.1** This Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter herein, and any and all  
20 prior discussions, negotiations, commitments and understandings related hereto. No  
21 representations, oral or otherwise, express or implied, other than those contained herein have  
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
23 herein, shall be deemed to exist or to bind any Party.

24 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
26 explicitly provided herein, each Party shall bear its own fees and costs.

1 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the request of the Parties. The  
4 Parties request the Court to fully review this Consent Judgment and, being fully informed  
5 regarding the matters which are the subject of this action, to:

6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 **IT IS SO STIPULATED:**

12 Dated: 9/18/, 2015

ENVIRONMENTAL RESEARCH  
CENTER

13  
14 By: 

Chris Hepinstall, Executive Director

15  
16 Dated: Sept. 18, 2015

GENUINE HEALTH CORPORATION

17  
18 By: 

Stewart Brown, President

19  
20 Dated: Sept. 18, 2015

GENUINE HEALTH, INC.

21  
22 By: 

Stewart Brown, President

23  
24 Dated: Sept. 18, 2015

1064510 ONTARIO LIMITED

25  
26 By: 

Stewart Brown, President

27  
28 **APPROVED AS TO FORM:**

1  
2 Dated: September 22, 2015

WRAITH LAW

3 By: William F. Wraith  
4 William F. Wraith  
5 Attorney for Plaintiff  
6 Environmental Research Center

7 Dated: September 21, 2015

GREENBERG TRAURIG, LLP

8 By: A. Cortez  
9 Greg Speria  
10 Attorney for Defendants Genuine Health  
11 Corporation, Genuine Health, Inc., and  
12 1064510 Ontario Limited

13  
14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18  
19 Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
20 Judge of the Superior Court



# **EXHIBIT “A”**

**WRAITH LAW**  
16485 LAGUNA CANYON ROAD  
SUITE 250  
IRVINE, CALIFORNIA 92618  
Tel (949) 251-9977  
Fax (949) 251-9978

May 23, 2014

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Genuine Health Corporation  
Genuine Health Inc.  
1064510 Ontario Limited**

**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:

**1. Genuine Health 6 Hour Extra Energy – Lead**

2. **Genuine Health Go4Trim - Lead**
3. **Genuine Health Vegan Proteins+ Natural Vanilla - Lead**
4. **Genuine Health ActivFuel+ Black Raspberry Lemonade - Lead**
5. **Genuine Health Proteins+ Instant Smoothie A Day Natural Orange Cream – Lead**
6. **Genuine Health Vegan Proteins+ Natural Strawberry Vanilla Smoothie – Lead**
7. **Genuine Health ActivRecover+ Sports Nutrition Orange – Lead**
8. **Genuine Health Vegan Proteins+ Double Chocolate – Lead**
9. **Genuine Health Healthy Skin Chocolate Soft Chews – Lead**
10. **Genuine Health Fast Back + Care – Lead**
11. **Genuine Health Fermented Whole Body Nutrition Acai Mango Natural Flavor - Lead**
12. **Genuine Health Fermented Whole Body Nutrition Natural Flavor – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 23, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.


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

May 23, 2014

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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,

A handwritten signature in black ink that reads "William F. Wraith". The signature is written in a cursive, slightly slanted style.

---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Genuine Health Corporation, Genuine Health Inc., and 1064510 Ontario Limited 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 Genuine Health Corporation, Genuine Health Inc., and 1064510 Ontario Limited**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

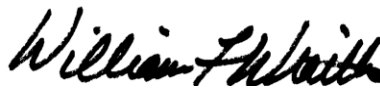
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: May 23, 2014



---

William F. Wraith

**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 23, 2014, 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  
Genuine Health Corporation  
317 Adelaide St. W, Suite 501  
Toronto ON M5V 1P9  
Canada

Current President or CEO  
1064510 Ontario Limited  
317 Adelaide St. W, Suite 501  
Toronto ON M5V 1P9  
Canada

Current President or CEO  
Genuine Health Inc.  
317 Adelaide St. W, Suite 501  
Toronto ON M5V 1P9  
Canada

Current President or CEO  
Genuine Health Corporation  
775 East Blithedale Ave., #364  
Mill Valley, CA 94941

Current President or CEO  
Genuine Health Inc.  
775 East Blithedale Ave., #364  
Mill Valley, CA 94941

On May 23, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, 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 23, 2014, I served the following documents: **NOTICE OF VIOLATIONS, 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 23, 2014, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Tiffany Capehart

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

May 23, 2014

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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  
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  
209 Post Office Box 370  
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 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<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  
201 Commercial Street  
Nevada City, CA 95959

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

District Attorney, Humboldt County  
825 5th 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