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6 ENVIRONMENTAL RESEARCH CENTER, INC.

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11 Attorney for Defendants
12 TONE IT UP, LLC; TONE IT UP, INC.

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

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

18 Plaintiff,

19 v.

20 TONE IT UP, LLC, a California limited
liability company; TONE IT UP, INC., a
21 Delaware corporation; and DOES 1 – 25,

22 Defendants.
23
24

CASE NO. RG 18900999

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 16, 2018

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On April 16, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
28 Complaint for Permanent Injunction, Civil Penalties and Other Relief (the “Complaint”) pursuant

1 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
2 65”), against TONE IT UP, LLC; TONE IT UP, INC. (collectively “TIU”); and DOES 1-25. In
3 this action, ERC alleges that a number of products manufactured, distributed, or sold by TIU
4 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
5 expose consumers to this chemical at a level requiring a Proposition 65 warning. These products
6 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
7 Products”) are:

- 8 • Tone It Up Plant Based Protein Chocolate
- 9 • Perfect Fit Protein Plant-Based Chocolate

10 **1.2** ERC and TIU are hereinafter referred to individually as a “Party” or collectively
11 as the “Parties.”

12 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
13 causes, helping safeguard the public from health hazards by reducing the use and misuse of
14 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
15 and encouraging corporate responsibility.

16 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
17 “person in the course of doing business” within the meaning of Proposition 65. TIU
18 manufactures, distributes, and/or sells the Covered Products.

19 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
20 dated November 28, 2017 and February 2, 2018 that were served on the California Attorney
21 General, other public enforcers, and TIU (“Notices”). True and correct copies of the 60-Day
22 Notices dated November 28, 2017 and February 2, 2018 are attached hereto as **Exhibits A and**
23 **B** respectively and each is incorporated herein by reference. More than 60 days have passed
24 since the Notices were served on the Attorney General, public enforcers, and TIU and no
25 designated governmental entity has filed a complaint against TIU with regard to the Covered
26 Products or the alleged violations.

27 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
28 persons in California to lead without first providing clear and reasonable warnings in violation

1 of California Health and Safety Code section 25249.6. TIU denies all material allegations
2 contained in the Notices and Complaint.

3 **1.7** The Parties have entered into this Consent Judgment in order to settle,
4 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
5 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
6 be construed as an admission by any of the Parties or by any of their respective officers,
7 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
8 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
9 violation of law.

10 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
11 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
12 current or future legal proceeding unrelated to these proceedings.

13 **1.9** The Effective Date of this Consent Judgment is the date on which notice is given
14 that it has been entered as a Judgment by this Court.

15 **2. JURISDICTION AND VENUE**

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

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

24 **3.1** Beginning on the Effective Date, TIU shall be permanently enjoined from
25 manufacturing for sale in the State of California, “Distributing into the State of California,” or
26 directly selling in the State of California, any Covered Products which expose a person to a
27 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the
28 warning requirements under Section 3.2.

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that TIU knows or has reason to know
4 will sell the Covered Product in California.

5 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
6 Level” shall be measured in micrograms, and shall be calculated using the following formula:
7 micrograms of lead per gram of product, multiplied by grams of product per serving of the
8 product (using the largest serving size appearing on the product label), multiplied by servings
9 of the product per day (using the largest number of servings in a recommended dosage
10 appearing on the product label), which equals micrograms of lead exposure per day, excluding
11 amounts of allowances of lead in the ingredients listed in the table below. If no recommended
12 daily serving size is provided on the label, then the daily serving size shall equal one.

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (elemental)	0.8 micograms/gram
Ferrous Fumarate	0.4 micograms/gram
Zinc Oxide	8.0 micograms/gram
Magnesium Oxide	0.4 micograms/gram
Magnesium Carbonate	0.332 micograms/gram
Magnesium Hydroxide	0.4 micograms/gram
Zinc Gluconate	0.8 micograms/gram
Potassium Chloride	1.1 micograms/gram
Cocoa-powder	1.0 micograms/gram

23
24 If, at any time after the Effective Date, ERC tests a Covered Product that does not contain
25 a warning described in Section 3.2, and the test results indicate that the Daily Lead Exposure
26 Level is greater than 0.5 micrograms per day, TIU agrees to confidentially supply to ERC, within
27 30 days of ERC’s written request, a list of ingredients, including the percentage of each
28 ingredient (“Ingredient List”), of that particular Covered Product so that ERC may be able to

1 calculate the Daily Exposure Level based on the allowances in the table above.

2 **3.2 Clear and Reasonable Warnings**

3 If TIU is required to provide a warning pursuant to Section 3.1, the following warning
4 must be utilized (“Warning”):

5 **WARNING:** Consuming this product can expose you to chemicals including lead which is
6 [are] known to the State of California to cause [cancer and] birth defects or other
7 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

8 TIU shall use the phrase “cancer and” in the Warning if TIU has reason to believe that the “Daily
9 Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
10 control methodology set forth in Section 3.4 or if TIU has reason to believe that another
11 Proposition 65 chemical is present which may require a cancer warning.

12 The Warning shall be securely affixed to or printed upon the container or label of each
13 Covered Product. If the Warning is provided on the label, it must be set off from other
14 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
15 the internet by TIU, the Warning shall appear on the checkout page when a California delivery
16 address is indicated for any purchase of any Covered Product, on the product display page for the
17 Covered Product, or in a pop-up window. An asterisk or other identifying method must be
18 utilized to identify which products on the checkout page are subject to the Warning.

19 The Warning for each Covered Product shall be at least the same size as the largest of any
20 other health or safety warnings for that Covered Product also appearing on its website or on the
21 label or container of TIU’s product packaging and the word “**WARNING**” shall be in all capital
22 letters and in bold print. The Warning shall not contain statements indicating that the chemicals in
23 the Covered Product are naturally occurring.

24 TIU must display the above Warning with such conspicuousness, as compared with other
25 words, statements, design of the label, container, or on its website, as applicable, to render the
26 Warning likely to be read and understood by an ordinary individual under customary conditions of
27 purchase or use of the product.

28 **3.3 Reformulated Covered Products**

A Reformulated Covered Product is a Covered Product for which the “Daily Lead

1 Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the quality
2 control methodology described in Section 3.4.

3 **3.4 Testing and Quality Control Methodology**

4 **3.4.1** Beginning within one year of the Effective Date, TIU shall arrange for
5 lead testing of the Covered Products, if TIU is not warning on the Covered Products as required
6 under Section 3.2, at least once a year for a minimum of five consecutive years by arranging for
7 testing of five randomly selected samples of each of the Covered Products, in the form intended
8 for sale to the end-user, which TIU intends to sell or is manufacturing for sale in California,
9 directly selling to a consumer in California or “Distributing into the State of California.” If
10 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
11 Product during each of five consecutive years, then the testing requirements of this Section will
12 no longer be required as to that Covered Product. However, if during or after the five-year
13 testing period, TIU changes ingredient suppliers for any of the Covered Products and/or
14 reformulates any of the Covered Products, TIU shall test that Covered Product annually for at
15 least four (4) consecutive years after such change is made.

16 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
17 lead detection result of the five (5) randomly selected samples of the Covered Products will be
18 controlling.

19 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
20 laboratory method that complies with the performance and quality control factors appropriate
21 for the method used, including limit of detection, qualification, accuracy, and precision that
22 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
23 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

24 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
25 independent third party laboratory certified by the California Environmental Laboratory
26 Accreditation Program or an independent third-party laboratory that is registered with the
27 United States Food & Drug Administration.

28 **3.4.5** Nothing in this Consent Judgment shall limit TIU’s ability to conduct, or

1 require that others conduct, additional testing of the Covered Products, including the raw
2 materials used in their manufacture.

3 **3.4.6** Within thirty (30) days of ERC’s written request, which shall not be
4 made more than once per year, within the first five years after the Effective Date, TIU shall
5 deliver lab reports obtained pursuant to Section 3.4 to ERC. TIU shall retain all test results and
6 documentation for a period of five years from the date of each test.

7 **4. SETTLEMENT PAYMENT**

8 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
9 attorney’s fees, and costs, TIU shall make a total payment of \$95,000.00 (“Total Settlement
10 Amount”) to ERC within 5 business days of the Effective Date (“Due Date”). TIU shall make
11 this payment by wire transfer to ERC’s account, for which ERC will give TIU the necessary
12 account information. The Total Settlement Amount shall be apportioned as follows:

13 **4.2** \$34,105.26 shall be considered a civil penalty pursuant to California Health and
14 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$25,578.95) of the civil penalty to
15 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
16 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
17 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,526.31) of the civil penalty.

18 **4.3** \$2,137.59 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **4.4** \$25,578.91 shall be distributed to ERC as an Additional Settlement Payment
21 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
23 caused by TIU in this matter. ERC represents that these activities are detailed below and support
24 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
25 supplement products in California. ERC represents that its activities have had, and will continue
26 to have, a direct and primary effect within the State of California because California consumers
27 will be benefitted by the reduction and/or elimination of exposure to lead in dietary supplements
28

1 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
2 the products.

3 Based on its review of past years' actual budgets, ERC represents that it is providing the
4 following list of activities ERC engages in to protect California consumers through Proposition
5 65 citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate
6 those activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing
7 dietary supplement products that may contain lead and are sold to California consumers. This
8 work includes continued monitoring and enforcement of past consent judgments and settlements
9 to ensure companies are in compliance with their obligations thereunder, with a specific focus on
10 those judgments and settlements concerning lead. This work also includes investigation of new
11 companies that ERC does not obtain any recovery through settlement or judgment; (2)
12 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
13 Compliance Program by acquiring products from companies, developing and maintaining a case
14 file, testing products from these companies, providing the test results and supporting
15 documentation to the companies, and offering guidance in warning or implementing a self-
16 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
17 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
18 products that reach California consumers by providing access to free testing for lead in dietary
19 supplement products (Products submitted to the program are screened for ingredients which are
20 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
21 qualified laboratory for testing, and the results shared with the consumer that submitted the
22 product).

23 ERC shall be fully accountable in that it will maintain adequate records to document and
24 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
25 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
26 shall provide the Attorney General, within thirty days of any request, copies of documentation
27 demonstrating how such funds have been spent.

1 **4.5** \$12,510.00 shall be distributed to Aqua Terra Aeris Law Group as
2 reimbursement of ERC’s attorney’s fees, while \$20,668.24 shall be distributed to ERC for its
3 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
4 costs.

5 **4.6** In the event that TIU fails to remit the Total Settlement Amount owed under
6 Section 4 of this Consent Judgment on or before the Due Date, TIU shall be deemed to be in
7 material breach of its obligations under this Consent Judgment. ERC shall provide written
8 notice of the delinquency to TIU via electronic mail. If TIU fails to deliver the Total
9 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
10 shall accrue interest at the statutory judgment interest rate provided in the California Code of
11 Civil Procedure section 685.010. Additionally, TIU agrees to pay ERC’s reasonable attorney’s
12 fees and costs for any efforts to collect the payment due under this Consent Judgment.

13 **5. MODIFICATION OF CONSENT JUDGMENT**

14 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
15 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
16 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
17 modified consent judgment.

18 **5.2** If either party seeks to modify this Consent Judgment under Section 5.1, then
19 that party must provide written notice to the other party of its intent (“Notice of Intent”). The
20 parties shall meet and confer regarding the proposed modification in the Notice of Intent within
21 thirty (30) days of the date of the Notice of Intent. Should it become necessary, the Parties may
22 agree in writing to different deadlines for the meet-and-confer period.

23 **5.3** In the event that a party initiates or otherwise requests a modification under
24 Section 5.1, and the meet and confer process leads to a joint motion or application for a
25 modification of the Consent Judgment, the party requesting the modification shall prepare, file
26 and argue the motion or application.

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1 **5.4** Where the meet-and-confer process does not lead to a joint motion or
2 application in support of a modification of the Consent Judgment, then either Party may seek
3 judicial relief on its own.

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

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

8 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
9 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
10 inform TIU in a reasonably prompt manner of its test results, including information sufficient to
11 permit TIU to identify the Covered Products at issue. TIU shall, within thirty (30) days
12 following such notice, provide ERC with testing information, from an independent third-party
13 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating TIU's
14 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
15 the matter prior to ERC taking any further legal action.

16 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

24 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
25 on behalf of itself and in the public interest, and TIU and its respective officers, directors,
26 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
27 franchisees, licensees, customers (not including private label customers of TIU), distributors,
28 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain

1 of any Covered Product, and the predecessors, successors, and assigns of any of them
2 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby
3 fully releases and discharges the Released Parties from any and all claims, actions, causes of
4 action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that
5 could have been asserted from the handling, use, or consumption of the Covered Products, as to
6 any alleged violation of Proposition 65 or its implementing regulations arising from the failure
7 to provide Proposition 65 warnings on the Covered Products regarding lead up to and including
8 the Effective Date.

9 **8.2** ERC on its own behalf only, and TIU on its own behalf only, further waive
10 and release any and all claims they may have against each other for all actions or statements
11 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
12 connection with the Notices and Complaint up through and including the Effective Date,
13 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
14 enforce the terms of this Consent Judgment.

15 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
16 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
17 discovered. ERC on behalf of itself only, and TIU on behalf of itself only, acknowledge that
18 this Consent Judgment is expressly intended to cover and include all such claims up through
19 and including the Effective Date, including all rights of action therefore. ERC and TIU
20 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown
21 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
22 claims. California Civil Code section 1542 reads as follows:

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

28 ERC on behalf of itself only, and TIU on behalf of itself only, acknowledge and understand the
significance and consequences of this specific waiver of California Civil Code section 1542.

1 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 in the Covered Products as set forth in the Notices and Complaint.

4 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of TIU's
6 products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

14 All notices required to be given to either Party to this Consent Judgment by the other shall
15 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
16 email may also be sent.

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

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Tel: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

23 With a copy to:
24 MATTHEW C. MACLEAR
25 ANTHONY M. BARNES
26 AQUA TERRA AERIS LAW GROUP
27 828 San Pablo Ave, Suite 115B
28 Albany, CA 94706
Ph: 415-568-5200
Email: mcm@atalawgroup.com

TONE IT UP, LLC; TONE IT UP, INC.

Shane McCassy
Chief Operating Officer

1 1110 Manhattan Avenue
2 Manhattan Beach, CA 90266

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4 **12. COURT APPROVAL**

5 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
6 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
7 Consent Judgment.

8 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
9 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
10 prior to the hearing on the motion.

11 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
12 void and have no force or effect.

13 **13. EXECUTION AND COUNTERPARTS**

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

17 **14. DRAFTING**

18 The terms of this Consent Judgment have been reviewed by the respective counsel for each
19 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
20 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
21 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
22 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
23 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
24 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
25 equally in the preparation and drafting of this Consent Judgment.

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

27 If a dispute arises with respect to either Party's compliance with the terms of this Consent
28 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in

1 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
2 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

3 **16. ENFORCEMENT**

4 ERC may, by motion or order to show cause before the Superior Court of Alameda
5 County, enforce the terms and conditions contained in this Consent Judgment. In any action
6 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
7 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
8 To the extent the failure to comply with the Consent Judgment constitutes a violation of
9 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
10 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
11 law for failure to comply with Proposition 65 or other laws.

12 **17. ENTIRE AGREEMENT, AUTHORIZATION**

13 **17.1** This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter herein, and any and all
15 prior discussions, negotiations, commitments, and understandings related hereto. No
16 representations, oral or otherwise, express or implied, other than those contained herein have
17 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
18 herein, shall be deemed to exist or to bind any Party.

19 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
20 authorized by the Party he or she represents to stipulate to this Consent Judgment.

21 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
22 **CONSENT JUDGMENT**

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

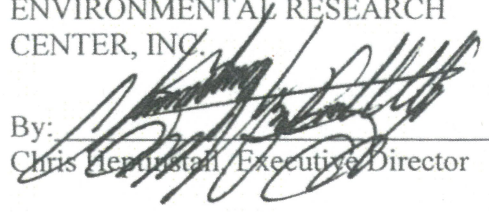
26 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
27 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
28 been diligently prosecuted, and that the public interest is served by such settlement; and

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

3 **IT IS SO STIPULATED:**


4 Dated: 3/15/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Herpin, Executive Director

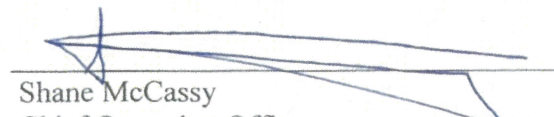
8 Dated: 3/15/, 2018

TONE IT UP, LLC


Shane McCassy
Chief Operating Officer

13 Dated: 3/15/, 2018


TONE IT UP, INC.


Shane McCassy
Chief Operating Officer

16 **APPROVED AS TO FORM:**

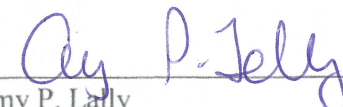
17 Dated: March 15, 2018

AQUA TERRA AERIS LAW GROUP

By: 
Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

23 Dated: 3/16, 2018

SIDLEY AUSTIN LLP

By: 
Amy P. Lally
Attorney for Defendant Tone It Up, LLC
and Tone It Up, Inc.

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2018

Judge of the Superior Court

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EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

November 28, 2017

**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, Inc. ("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:

Tone It Up, LLC



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 28, 2017
Page 2

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

- 1. Tone It Up Plant Based Protein Chocolate - Lead**
- 2. Perfect Fit Protein Plant-Based 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.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 28, 2014, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 28, 2017
Page 3

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.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Tone It Up, LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 28, 2017
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Tone It Up, LLC

I, Matthew Maclear, 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 chemical that is 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: November 28, 2017

A handwritten signature in cursive script that reads "Matthew Maclear".

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 28, 2017
Page 5

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On November 28, 2017 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties 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
Tone It Up, LLC
1110 Manhattan Avenue
Manhattan Beach, CA 90266

Current President or CEO
Tone It Up, LLC
703 Pier Avenue, Suite B #806
Hermosa Beach, CA 90254

New Season Corporate Services (C2928478)
(Tone It Up, LLC's Registered Agent for
Service of Process)
4600 Larson Way
Sacramento, CA 95822

On November 28, 2017 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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)** were served on the following party when a true and correct copy thereof was uploaded 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 November 28, 2017 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 28, 2017
Page 6

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org



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

November 28, 2017

Page 7

Jeff W. Reisig, District Attorney

Yolo County

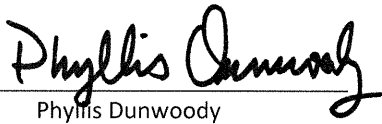
301 Second Street

Woodland, CA 95695

cfepd@yolocounty.org

On November 28, 2017 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on November 28, 2017, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
 November 28, 2017
 Page 8

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	
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, Shasta County 1355 West Street Redding, CA 96001	
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, Sierra County PO Box 457 Downieville, CA 95936	
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, Siskiyou County Post Office Box 986 Yreka, CA 96097	
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, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453			

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EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

February 2, 2018

**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, Inc. ("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:

Tone It Up, Inc.

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
Page 2

- 1. Tone It Up Plant Based Protein Chocolate - Lead**
- 2. Perfect Fit Protein Plant-Based 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.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 28, 2014, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
Page 3

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.**

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Maclear". The signature is written in a cursive style with a large, looped initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Tone It Up, Inc. and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Tone It Up, Inc.

I, Matthew Maclear, 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 chemical that is 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.

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: February 2, 2018

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
Page 5

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 February 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties 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
Tone It Up, Inc.
1110 Manhattan Avenue
Manhattan Beach, CA 90266

CT Corporation System
(Tone It Up, Inc.’s Registered Agent
for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Current President or CEO
Tone It Up, Inc.
703 Pier Avenue, Suite B #806
Hermosa Beach, CA 90254

The Corporation Trust Company
(Tone It Up, Inc.’s Registered Agent
for Service of Process)
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

On February 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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)** were served on the following party when a true and correct copy thereof was uploaded 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 February 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
Page 6

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
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Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On February 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on February 2, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 2, 2018
Page 8

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	
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, Shasta County 1355 West Street Redding, CA 96001	
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, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
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, Siskiyou County Post Office Box 986 Yreka, CA 96097	
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, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453			