

### PHT SEEDLINGS



The **Buck Tobacco Sponsorship Project** was created with \$1.525 million from settlement of three lawsuits alleging the tobacco industry illegally promoted and sold smokeless tobacco products on public lands, and failed to give required health warnings. To best use these funds, leaders in California public

agencies and community organizations were asked which smokeless tobacco issues were important but not being addressed, and which kinds of efforts could provide fundamental change but were less likely to be funded by other sources. Their answers pointed to a project targeting tobacco sponsorship of rodeos. As a result, in 2002 the newly named Buck Tobacco project funded five local projects within California, ranging from San Diego to Stanislaus counties, to restrict “chew/spit” tobacco and cigarette promotion at rodeos and related events such as rodeo-themed “bar nights.” To support local efforts, Buck Tobacco provided overall coordination plus a wealth of information and outreach resources from a central office.



Rodeo event organizer Manuel Souza proudly wears his BT sleeve patch.

“One major lesson from this project was realizing there were people across California who were disturbed by tobacco sponsorship of rodeos, but didn’t have the resources to address that. Many were hesitant to question their local leaders, who often ran the rodeos, especially in rural areas,” notes

—Continued on page 3

### Settlement Funds Recently Received

■ **Artificial Turf.** \$170,000 in additional funds from settlement of a Proposition 65 lawsuit claiming that a manufacturer exposed California consumers to lead from artificial turf without first providing “clear and reasonable warnings” that the products contain lead. *People of the State of California v. Beaulieu Group et al.* Judge: Hon. Robert B. Freedman. Attorneys: Edmund G. Brown, Jr., California Attorney General; J. Matthew Rodriguez, Ken Alex, Edward Weil, and Dennis Ragen, California Attorney General’s Office; Carmen Trutanich, Earl Thomas, Patricia Bilgin, Elise Ruden, and Vaughn Minassian,

Los Angeles City Attorney’s Office; David Paulson and Criselda Gonzalez, Solano District Attorney’s office; Jeffrey Margulies, Fulbright & Jaworski, LLP for Fieldturf, USA, Inc.; Julia Davidson, Beaulieu of America, Joann Brown Williams, AstroTurf.

■ **Weight loss products.** \$30,000 settlement from a judgment alleging illegal sale of skin patch Weight Loss Patch products to California consumers. *People of the State of California v. CVS Pharmacy Inc., et al.* Judge: Hon. Francisca P. Tisher; Attorneys: Representatives of the following County District Attor-

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**SPOTLIGHT ON DR. ANTHONY ITON**

Dr. Anthony Iton is a doctor and lawyer who was **Alameda County Public Health Department** Director and County Health Officer when he joined the Public Health Trust Advisory Board. Dr. Iton received his medical degree at Johns Hopkins Medical School, and is board-certified in both internal medicine and preventive medicine.

After a short time serving as a primary care physician for the San Francisco Department of Public Health, Dr. Iton returned to school, this time to earn degrees in both law and public health from the University of California, Berkeley. While a law student, he worked at the Berkeley Community Law Center on HIV-AIDS issues, focusing on questions of whether and when to classify HIV-infected people as “disabled” for purposes of Social Security eligibility. He also served on the Board of the AIDS Legal Referral Panel of attorneys. “I enjoyed that AIDS-HIV work because it combined legal and medical issues for people, usually with low incomes,” recalls Iton. Following law school graduation, he was a staff attorney and health policy analyst for the West Coast regional office of Consumer’s Union, publisher of Consumer Reports magazine.

In fall 2009, California’s largest, private health foundation, **The California Endowment**, announced that Dr. Iton would join them to lead a 10-year effort to create communities

where children are healthy, safe and ready to learn. “The practice of medicine in the U.S. is more about damage control than it is about a strategy for intervening in diseases and injuries that can often be prevented. I was drawn to study law because that means knowing the rulebook, getting an insider’s view of the language and status of power.”



*Dr. Anthony Iton*

As an example of the intersection of law and community health improvement efforts, Iton cites land use policies that affect locating waste incinerators. “To bring low income communities into that siting decision can bring enormous benefits to those communities’ health,” he observes. As for the general topic of class action suits and cy pres settlements, Iton believes that “to optimize the value of cy pres funds coming from a suit with public health implications, it’s important to spend those dollars informed by real public health experiences. Cy pres distributions are going to happen. The question is how they will be done, whether people are using the best available expertise to decide how to spend those funds appropriately and effectively.”

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**Settlements—Continued from page 1**

ney’s Offices – Gary Lieberstein and Daryl Roberts, Napa; Edward Berberian and Robert Nichols, Marin; Nancy O’Malley and Scott Patton, Alameda; Dean Flippo and John Hubanks, Monterey; Tony Rackauckas and Tracy Hughes, Orange; Stephan Passalacqua and Matthew Cheever, Sonoma; David Paulson and Diana Taira, Solano; Dolores Carr and Yen Dang, Santa

Clara; Bob Lee and Kelly Walker, Santa Cruz; and Gerald Benito and Erin Dervin, Shasta; Scott Jacobs, Reed Smith LLP for CVS Pharmacy.

**Lead in Children’s Products II.**

\$5,000 in additional funds from settlement of a Proposition 65 lawsuit claiming that the manufacture, distribution and sale of toys made of materials containing lead or lead compounds exposed California consumers

to lead without providing clean and reasonable warnings. *People of the State of California v. Mattel Inc., et al.* Judge: Hon. Steven A. Brick. Attorneys: Edmund G. Brown, Jr., California Attorney General; Timothy Sullivan and Harrison Pollak, California Attorney General’s Office; Stephen Holzer of Lewitt, Hackman, Shapiro, Marshall & Harlan for A.L.S. Industries, Inc.

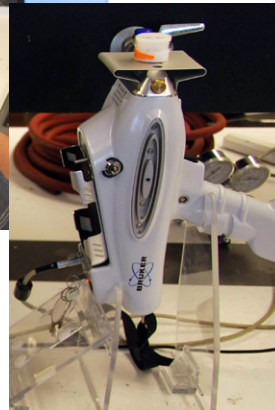
# SAFETY TESTING OF DIETARY SUPPLEMENTS

**San Francisco State University Chemistry Professor Peter Palmer** has used Proposition 65 settlement funds to help increase scientific knowledge and awareness of new testing methods for heavy metals in herbal products sold as dietary supplements. “Advances in energy dispersive X-ray Fluorescence (XRF) spectrometry can bring reliable testing to many more scientists, regulators and health organizations concerned with food safety. In the past, this kind of testing has relied primarily on expensive, time consuming atomic spectrometry techniques,” says Palmer. By contrast, XRF analyses for dietary supplements are complete in 1-2 minutes, sometimes without opening packaging.

Dr. Palmer has validated and disseminated information on XRF spectrometry to screen dietary supplements for arsenic, lead, and mercury. Based on this work, he has published articles on regulatory applications of XRF in the *Journal of Agricultural and Food Chemistry* and *Lab Plus International*, and the U.S. Food & Drug Administration (FDA) Laboratory Information Bulletin. He has also presented this work at numerous conferences, and organized workshops for university students and for professionals from the FDA and the California Department



*SF State University student uses handheld XRF analyzer*



ment of Toxic Substances Control.

This summer, his settlement funded-work contributed to initiation of a new, nationwide program to train FDA Consumer Safety Officers in San Francisco and other office locations in use of handheld XRF for identifying toxic elements in supplements and other consumer products. The FDA has now purchased portable XRF analyzers for facilities across the U.S., to screen dietary supplements for toxic elements. “Until recently, XRF technology has not received much attention from the analytical commu-

nity serving the public health sector. XRF and other field portable analytical instruments can enable the FDA to more cost effectively address the massive volume of imported products that do not meet FDA requirements. Professor Palmer’s work has been invaluable in this effort,” comments **Richard M. Jacobs, Ph.D., FDA Science Advisor, Division of Field Sciences, Office of Regulatory Operations.** Dr. Palmer comments, “It is gratifying to see our efforts in developing, demonstrating, validating, presenting, and publishing on the use of XRF methods come to fruition. We look forward to wider use of XRF to better protect the public health.”

Funds for Dr. Palmer’s work came from settlement of *As You Sow v. Brion Herbs Corporation and Sun Ten Laboratories, Inc.* Judges: Hon. A. James Robertson and Hon. Ronald E. Quidachay. Attorneys: Andrew Packard, Eric Wildgrube and Katharine Essick of Law Offices of Andrew L. Packard; Thomas Gibson of Best, Best & Krieger LLP, and Michael Lee, Law Offices of Michael G.W. Lee for Brion Herbs Corp. and Sun Ten Labs.

## **PHT Seedlings— Continued from page 1**

**Buck Tobacco director Andrea Craig Dodge.** “Many of our successes came from bringing in rodeo community members to speak out on tobacco issues.” For example, a rodeo queen joined Buck Tobacco at a local press conference, and a bull riding event organizer showed his Buck Tobacco sleeve patch.

Building on these local programs’ success, Buck Tobacco attracted statewide funding from the **California Department of Public Health**, and national funding from the **American Legacy Foundation** and the

## **Robert Wood Johnson Foundation.**

“We asked our local California project people, ‘What do you know now that you wish you’d known much earlier?’ Then we put those hard-earned lessons into a **series** of fourteen fact sheets, resource lists, and action ideas for other local projects working to restrict tobacco sponsorship of rodeos,” recalls Dodge.

**Jennifer Wilson** oversaw the **Oklahoma Students Working Against Tobacco (SWAT)** program, one that benefitted from Buck Tobacco’s national involvement. “We’d see young kids in our state mimicking their cowboy heroes--carrying a rope in one hand and a round spit can in

the other. With Buck Tobacco’s tools and guidance, SWAT passed several ‘no tobacco sponsorship’ policies in amateur rodeo arenas across the state. Rodeos are for families, not big tobacco!”

In early 2010, the U.S. Smokeless Tobacco Company ended most of its sponsorship of rodeos and bull riding, but other tobacco company sponsorship of races, fairs and similar outdoor events continues. Buck Tobacco ended its active operations in July, now its website offers ongoing access to valuable tools for tobacco control advocates in their efforts to restrict tobacco sampling or sponsorship.

# 'GREEN CHEMISTRY' PROJECTS RECEIVE PHT GRANTS

The Public Health Trust's proposal solicitation and review process has culminated in \$337,000 of grant awards to six diverse projects. "These grants are an example of the Public Health Trust's availability to assist litigating parties seeking to settle their action in a manner that benefits the general public or specific groups, consistent with issues and parties involved in the original legal action," comments **Kathryn Sáenz Duke, director of the Public Health Trust**. "We are well positioned to use our expert advisory panels and our experience in this special kind of grantmaking to translate litigating parties' broad goals into appropriate projects."

**Assemblymember Mike Feuer**, who authored one of the key bills that established California's green chemistry program, notes that "Community organizations and non-governmental organizations play an indispensable role in promoting public health and protecting consumers from market excesses and shortcomings. These Public Health Trust funds will expand public awareness and involvement in the ongoing effort to ensure that consumer products in California are safe for our families."

Funding for the latest Public Health Trust grants comes from settlement of a lawsuit brought under Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. The lawsuit involved allegations of public exposure to hazardous chemicals in airline fuel; its settlement language directs the Public Health Trust to use its funds for environmental protection, worker health and safety, or education on human exposure to hazardous substances.

An expert advisory panel of the Public Health Trust chose the Green Chemistry Initiative as an effective and appropriate use of this settlement's funds. Working with a separately convened advisory panel, the Public Health Trust chose these projects:

**Berkeley Center for Green Chemistry**, working with the UC Berkeley Labor Occupational Health Program and School of Information, will



develop an online Public Library of Materials, a screening tool that will help workers, the public, and small businesses identify known chemical hazards in products and manufacturing processes and find safer alternatives.

**Black Women for Wellness** will initiate a comprehensive education and outreach campaign engaging African American women and girls on the Green Chemistry Initiative as it impacts community health and well-being.

**Breast Cancer Fund** will conduct an education and engagement campaign in support of a comprehensive green chemistry program, while working with legislators and regulatory departments to strengthen the Green Chemistry Initiative.

**CHANGE Coalition** will continue its role as the convening body for community, labor and health organiza-

tions in ongoing efforts to promote public participation and community engagement in California's efforts to reduce the impact of toxic chemicals on public health and incentivize a green chemistry economy.

**Physicians for Social Responsibility - Los Angeles** will work with other members of the Communication Committee Workgroup within the CHANGE Coalition to update and adapt education materials related to community participation within the Green Chemistry Initiative, specifically for under-represented populations in South Los Angeles and the Central and Inland Valleys. PSR-LA will also organize a green chemistry and economic development roundtable to promote a greater understanding of how green chemistry innovations can bring safer products to market and provide economic development opportunities for low-income communities.

**Sustainable Technology and Policy Program, UCLA** will bring together experts in toxicology, alternatives assessment, decision analysis and policy to develop regulatory alternatives analysis methodologies. The program will also create practical software tools for identifying safer substitutes for consumer products that contain chemical hazards.

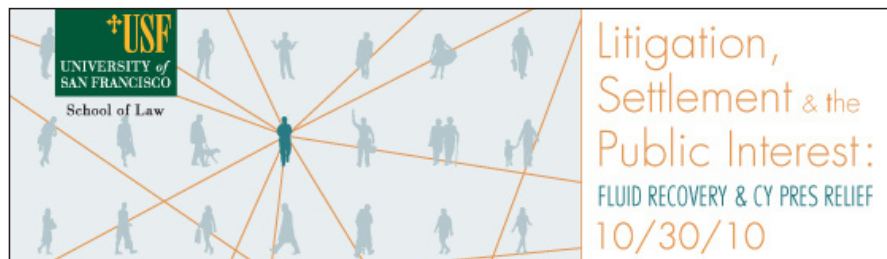
"We are thrilled that so many great organizations came forward with good ideas in support of California's Green Chemistry Initiative," said **Acting Director of Department of Toxic Substances Control Maziar Movassaghi**, which is responsible for developing the Green Chemistry Initiative. "We look forward to actively working with the grantees to help use these new funds to improve the health and safety of every Californian."

# SYMPOSIUM ON CY PRES SETTLEMENTS

October 30 event in San Francisco

What should happen when it is impossible or impractical to compensate some or all members of a class in a class action settlement? If the class members do not receive all available funds, who should? Are there emerging trends? Are there guidelines or specific examples that can serve as “best practices” under these circumstances?

These and related questions will be addressed at an October 30, 2010 symposium on Litigation, Settlement and the Public Interest: **Fluid Recovery and Cy Pres Relief**, convened by the **Public Health Trust and the University of San Francisco’s Center for Law and Ethics**. All interested individuals are invited to attend. For more information on this day of speaker presentations



and participant discussion, see [www.usfca.edu/law/cypres](http://www.usfca.edu/law/cypres).

## Other news regarding cy pres settlement and grantmaking issues

The **California Consumer Protection Foundation (CCPF)** has posted a summary of its June convening of complex litigation judges, plaintiff and defense bar attorneys, and consumer advocacy organizations. People invited to this two-hour dis-

cussion focused on cy pres doctrine and on practices aimed at ensuring a transparent and accountable process for settlement distributions. **CCPF Board President Judy Johnson** will join **Public Health Trust Director Kathryn Sáenz Duke** and leaders from three other nonprofit organizations with cy pres funding or grantmaking experience at one of the October 30 Symposium panels in San Francisco (see above).

## Judges and Attorneys Enabled Public Health Grantmaking

### Buck Tobacco

The 2002-2010 success of Buck Tobacco and its many partners was made possible by funds from three litigation settlements that launched this program, and later by funding from other public and private sources. The initial \$1.525 million grant resulted from settlement of *People of the State of California v. Swedish Match North America Inc.*; *The City and County of San Francisco and Environmental Law Foundation v. United States Tobacco Company, Inc (USSTC)*; and *People of the State of California v. U.S. Smokeless Tobacco Company (USSTC)*. Judges: Hon. Ronald Prager and Hon. John Cosgrove. Attorneys: Bill Lockyer, California Attorney General; Richard Frank, Dennis Eckhart, Amy Hertz, and Peter Williams, California Attorney General’s Office; Louise Renne, Owen Clements and Andrew Cheng, San Francisco City and County Attorney’s Office; William Lerach, Frank Janecek, Albert Meyerhoff, and Patrick Coughlin of Milberg LLP for Environmental Law Foundation; Gerard Roerty for Swedish Match;



Richard Verheij for U.S. Smokeless; José Allen, Douglas Fleming, Peter McKenna and Eric Sarner of Skadden, Arps, Slate, Meagher & Flom for U.S. Tobacco and U.S. Smokeless.

### California’s Green Chemistry Initiative

In September 2010, grants totalling \$337,000 for six diverse California projects were made possible by funds from settlement of *Environmental World Watch, Inc. v. Aeroflot et al.* Judge: Hon. A. James Robertson. Attorneys involved include Anthony Graham and Michael Martin of Graham & Martin; Roy Penuela of the Law Firm of Roy Penuela; Reuben Yeroushalmi of Yeroushalmi & Associates; Robert Lee of Lee Law Group; Gregory McClintock of Akerman Senterfitt; R. Raymond Rothman of Bingham McCutchen; Rod Margo of Condon & Forsyth; John Kortum of Archer Norris; Jesse Miller of Reed Smith; William Funderburk of Stanzler, Funderburk & Castellon; Harvey Elam of Kenney & Markowitz; Peter Hsiao of Morrison & Foerster.

## ■ PHT acknowledges...

...the many people and organizations who have, since the last newsletter, contributed information, wisdom, or financial support to Public Health Trust and projects funded by our grantmaking. In addition to those already mentioned in this newsletter, we thank:

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Josh Davis, University of San Francisco Center for Law & Ethics

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Bob Fredenburg, California Assembly Committee on Environmental Safety and Toxic Materials

Daniel Jacobson,  
Environment California

Joyce Lashof, School of Public Health, University of California, Berkeley

Assemblymember Pedro Nava, California Assembly Committee on Environmental Safety and Toxic Materials

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Peter Wood, California Department of Toxic Substances Control

Corey Yep, California Department of Toxic Substances Control

*Organization names for identification purposes only.*

### Special Thanks to:

The California Wellness Foundation  
The San Francisco Foundation

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*The Public Health Trust works with private attorneys, government agencies, and public health organizations interested in using litigation settlement funds to improve public health. PHT grantees have addressed marketing of food or tobacco products, exposure to toxic substances, medication access, air and water quality, and other issues affecting public health.*