

**ENDORSED  
FILED**  
San Francisco County Superior Court

JUL 20 2011

CLERK OF THE COURT  
BY: PARAM NATT  
Deputy Clerk

1 Michael Freund SBN 99687  
2 Law Office of Michael Freund  
3 1915 Addison Street  
4 Berkeley, CA 94704  
5 Telephone: (510) 540-1992  
6 Facsimile: (510) 540-5543

7  
8  
9 Attorney for Plaintiff Environmental Research Center

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO**

12 **ENVIRONMENTAL RESEARCH CENTER,**  
13 a California non-profit corporation

Case No.

**CGC-11-512615**

14 **Plaintiff,**

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF  
AND CIVIL PENALTIES**

15 **v.**

16 **ALLERGY RESEARCH GROUP, INC.,**  
17 **NUTRICOLOGY, INC. and DOES 1-100**

[Miscellaneous Civil Complaint (42)]  
Proposition 65, Health & Safety Code  
Section 25249.5 et seq.]

18 **Defendants.**

19  
20 Plaintiff Environmental Research Center hereby alleges:

21  
22 **I**

23 **INTRODUCTION**

24  
25 1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC")) brings this  
26 action as a private attorney general and in the public interest pursuant to Health & Safety Code  
27 Section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties to  
28

1 remedy Defendants' failure to warn users of certain products sold by the companies that they are  
2 exposed to lead, a chemical known to the State of California to cause cancer, birth defects and other  
3 reproductive harm. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health  
4 & Safety Code Section 25249.5 et seq) also known as "Proposition 65," businesses with ten or more  
5 employees must provide a "clear and reasonable warning" prior to exposing persons to these  
6 chemicals.  
7

## 8 II

### 9 PARTIES

10  
11 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes, helping  
12 safeguard the public from health hazards by bringing about a reduction in the use and misuse of  
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and  
14 encouraging corporate responsibility.  
15

16 3. Each Defendant is a business entity that manufactures, distributes and/or sells nutritional  
17 products that expose users of these products to lead in the State of California. These products are:  
18 Nutricology Inc. ProGreens with Advanced Probiotic Formula 15 StickPacks 132 g; Nutricology  
19 Inc. ProGreens with Advanced Probiotic Formula 30 Day Supply 265 g; Allergy Research Group  
20 Calm/Recharge 250 Grams; Allergy Research Group PhytoCort 120 Vegetarian Capsules; Allergy  
21 Research Group AllerAid Herbal 90 Tablets; Allergy Research Group Steady On 300 Grams;  
22 Allergy Research Group Liver Saver 120 Tablets; Allergy Research Group GastroCleanse with  
23 Psyllium Husks 100 Vegetarian Capsules; Nutricology Inc. Licorice Solid Extract (114 g);  
24 Nutricology Inc. FibroBoost 75 Vegetarian Capsules; Nutricology Inc. Sugar Balance Formula 90  
25 Vegetarian Capsules; Nutricology Inc. Chitosan 90 Vegetarian Capsules; Nutricology Inc.  
26 Slumberol 100 Vegetarian Capsules; Nutricology Inc. Slumberol 100 Vegetarian Capsules;  
27  
28

1 Nutricology Inc. SlimGreens Powder 180 grams; Allergy Research Group Earth Dragon 160  
2 Capsules; and Allergy Research Group Cell Saver 160 Capsules. ("Covered Products"). Each  
3 Defendant is a company that employs ten or more persons.  
4

5 4. Defendants Does I-100, are named herein under fictitious names, as their true names and  
6 capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each  
7 of said Does is responsible, in some actionable manner, for the events and happenings hereinafter  
8 referred to, either through said Defendants' conduct, or through the conduct of its agents, servants or  
9 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When  
10 said true names and capacities of the Does are ascertained, ERC will seek leave to amend this  
11 complaint to set forth the same.  
12

### 13 III

#### 14 JURISDICTION AND VENUE

15 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10 because  
16 this case is a cause not given by statute to other trial courts.  
17

18 6. ERC has performed any and all conditions precedent to the filing of a legal action pursuant to  
19 Proposition 65 by serving by mail Notices of Violation, dated November January 14, 2011 and  
20 March 11, 2011 to the Attorney General of the State of California, the state's District Attorneys,  
21 the appropriate City Attorney's and to Defendants. A true and correct copy of these Notices is  
22 attached herein as Exhibit A. More than 60 days have passed since these Notices were mailed  
23 and no public enforcement entity has filed a complaint in this case.  
24

25 7. This Court is the proper venue for the action because the causes of action have arisen in San  
26 Francisco where some of the violations of law have occurred. Furthermore, this Court is the proper  
27  
28

1 venue under Code of Civil Procedure Section 395.5 and Health & Safety Code Section 25249.7.  
2

3 IV

4 **STATUTORY BACKGROUND**

5 **A. Proposition 65**

6 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as  
7 "Proposition 65" by an overwhelming majority vote of the people in November of 1986.  
8

9 9. The warning requirement of Proposition 65 is contained in Health & Safety Code Section  
10 25249.6, which provides:

11 No person in the course of doing business shall knowingly and intentionally expose any  
12 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
13 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

14 10. Implementing regulations for Proposition 65 provide that warnings are required for consumer  
15 product exposures. A "consumer product exposure is an exposure which results from a person's  
16 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
17 good, or any exposure that results from receiving a consumer service." 27 CCR Section 25601 (b).

18 11. Whenever a clear and reasonable warning is required under Health & Safety Code Section  
19 25249.6, the "method employed to transmit the warning must be reasonably calculated considering  
20 the alternative methods available under the circumstances, to make the warning message available  
21 prior to exposure." 27 CCR Section 25601. The warning requirement may be satisfied by a  
22 warning that appears on a product's label or other labeling, shelf labeling, signs, a system of signs,  
23 public advertising identifying the system and toll-free information services, or any other, system,  
24 that provides clear and reasonable warnings. *Id.*, Section 25603.1 (a) – (d).  
25

26 12. Proposition 65 establishes a procedure by which the State is to develop a list of  
27 chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code  
28

1 Section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after  
2 the chemical was published on the State list. Id., Section 25249.10 (b). Lead was listed as a  
3 chemical known to the State of California to cause developmental toxicity and male and female  
4 reproductive toxicity on February 27, 1987. Lead was listed as a chemical known to the State of  
5 California to cause cancer on October 1, 1992. Title 27, Cal. Code Regs., Section 27001.  
6

7 13. Proposition 65 may be enforced by any person in the public interest who provides notice  
8 sixty days before filing suit to both the violator and designated law enforcement officials. The  
9 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed  
10 pursuant to Health & Safety Code Section 25249.7 (c).  
11

12 14. Proposition 65 provides that any person "violating or threatening to violate" Proposition 65  
13 may be enjoined in any court of competent jurisdiction. Health & Safety Code Section 25249.7 (a).  
14 To "threaten to violate" means "to create a condition in which there is a substantial probability that a  
15 violation will occur." Id., Section 25249.11 (e). Furthermore, violators are subject to a civil penalty  
16 of up to \$2,500 per day for each violation. Id., Section 25249.7 (b).  
17  
18

19 V

20 **STATEMENT OF FACTS**

21 15. Defendants manufacture, distribute and/or sell the Covered Products to the State of  
22 California. These products contain lead.

23 16. Defendants have knowingly and intentionally exposed numerous persons to lead, without  
24 providing a Proposition 65 warning. The company has at all times relevant hereto been aware that  
25 the Covered Products contain lead and that persons using these products are exposed to the  
26 chemical. Defendants market the Covered Products with knowledge that consumers are being  
27 exposed to lead during normal use of the product.  
28

1 17. Defendants have failed to provide consumers of the Covered Products with a clear and  
2 reasonable warning that they are being exposed to a chemical known to the State of California to  
3 cause cancer, birth defects and other reproductive harm.  
4

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**  
7 **and Reasonable Warning under Proposition 65)**

8 18. Defendants refer to paragraphs 1-17, inclusive, and incorporates them herein by this  
9 reference.

10 19. By committing the acts alleged above, Defendants have, in the course of doing business,  
11 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to  
12 the State of California to cause cancer, birth defects and other reproductive harm without first giving  
13 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code  
14 Section 25249.6.  
15

16 20. Said violations render each Defendant liable for civil penalties up to \$2,500 (two  
17 thousand, five hundred dollars) per day, for each violation.  
18

19 21. Defendants continued violation of the law will irreparably harm ERC and the public  
20 interest in whose behalf Plaintiff brings this action, for which there is no adequate remedy at law.  
21

22 **SECOND CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 22. ERC refers to paragraphs 1-21, inclusive, and incorporates them herein by this reference.

25 23. There exists an actual controversy relating to the legal rights and duties of the parties, within  
26 the meaning of Code of Civil Procedure Section 1060, between Plaintiff and Defendants  
27 concerning:  
28

1 a) whether Defendants have exposed individuals to a chemical known to the State of  
2 California to cause cancer, birth defects and other reproductive harm without providing clear and  
3 reasonable warning.  
4

5 VI

6 PRAYER

7 WHEREFORE Plaintiff prays for relief as follows:

8 1. On the First Cause of Action, for civil penalties for each and every violation according to  
9 proof;  
10

11 2. On the First Cause of Action, and pursuant to Health & Safety Code Section 25249.7 (a), for  
12 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,  
13 prohibiting Defendants from exposing persons to lead without providing clear and reasonable  
14 warning;  
15

16 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
17 Procedure Section 1060 declaring:

18 a. that Defendants have exposed individuals to a chemical known to the State of California to  
19 cause, birth defects and other reproductive harm without providing clear and reasonable warning;  
20 and  
21

22 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Section 1021.5 of the Code  
23 of Civil Procedure or the substantial benefit theory;

24 5. For costs of suit herein; and  
25

26 /// /// ///

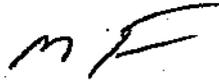
27 /// /// ///

28 /// /// ///

1 6. For such other relief as the Court may deem just and proper.

2 Dated: July 19, 2011

3  
4 By



5  
6 Michael Freund  
7 Attorney for Environmental Research Center



## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

January 14, 2011

### VIA CERTIFIED MAIL

Current President or CEO  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

### VIA PRIORITY MAIL

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this Notice that violated Proposition 65 are:

**Allergy Research Group, Inc. and Nutricology, Inc.**

The products that are the subject of this Notice and the chemicals in those products identified as exceeding allowable levels are:

**NutriCology Inc. ProGreens with Advanced Probiotic Formula 15 StickPacks 132 g - Lead**  
**NutriCology Inc. ProGreens with Advanced Probiotic Formula 30 Day Supply 265 g - Lead**

EXHIBIT A

January 14, 2011

Page 2

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 as chemical known to cause cancer.

This letter is a Notice to Allergy Research Group, Inc.; Nutricology, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Allergy Research Group, Inc. and Nutricology, Inc. currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Allergy Research Group, Inc. and Nutricology, Inc. have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. 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's label. Allergy Research Group, Inc. and Nutricology, Inc. violated Proposition 65 because the Companies have failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Allergy Research Group, Inc. and Nutricology, Inc. agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall, Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Allergy Research Group, Inc. and Nutricology, Inc. 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 Allergy Research Group, Inc. and Nutricology, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged 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: January 14, 2011



---

Michael Freund  
Attorney for Environmental Research Center

**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

On January 14, 2011, 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 in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On January 14, 2011, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 14, 2011, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

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

January 14, 2011

Page 6

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

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

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113



**Environmental Research Center**

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

March 11, 2011

**VIA CERTIFIED MAIL**

Current President or CEO  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

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and Select City Attorneys  
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The names of the Companies covered by this Notice that violated Proposition 65 are:

**Allergy Research Group, Inc. and Nutricology, Inc.**

The products that are the subject of this Notice and the chemicals in those products identified as exceeding allowable levels are:

**Allergy Research Group Calm/Recharge 250 Grams - Lead**  
**Allergy Research Group PhytoCort 120 Vegetarian Capsules - Lead**  
**Allergy Research Group AllerAid Herbal 90 Tablets - Lead**  
**Allergy Research Group Steady On 300 Grams - Lead**  
**Allergy Research Group Liver Saver 120 Tablets - Lead**  
**Allergy Research Group GastroCleanse with Psyllium Husks 100 Vegetarian Capsules - Lead**  
**NutriCology Inc. Licorice Solid Extract (114g) - Lead**  
**NutriCology Inc. FibroBoost 75 Vegetarian Capsules - Lead**  
**NutriCology Inc. Sugar Balance Formula 90 Vegetarian Capsules - Lead**  
**NutriCology Inc. Chitosan 90 Vegetarian Capsules - Lead**  
**NutriCology Inc. Slumberol 100 Vegetarian Capsules - Lead**  
**NutriCology Inc. SlimGreens Powder 180 grams - Lead**  
**Allergy Research Group Earth Dragon 150 Capsules - Lead**  
**Allergy Research Group Cell Saver 150 Capsules - 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 as chemical known to cause cancer.

This letter is a Notice to Allergy Research Group, Inc.; Nutricology, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Allergy Research Group, Inc. and Nutricology, Inc. currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Allergy Research Group, Inc. and Nutricology, Inc. have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. 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's label. Allergy Research Group, Inc. and Nutricology, Inc. violated Proposition 65 because the Companies have failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Allergy Research Group, Inc. and Nutricology, Inc. agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

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

March 11, 2011

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Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Allergy Research Group, Inc. and Nutricology, Inc. 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 Allergy Research Group, Inc. and Nutricology, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged 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: March 11, 2011



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Michael Freund  
Attorney for Environmental Research Center

**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

On March 11, 2011, 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 in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

On March 11, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On March 11, 2011, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on March 11, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

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

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District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

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

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 2121  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113