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FILED

DEC 17 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

8 Attorneys for Plaintiff Environmental Research Center

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF MARIN**

11
12 **ENVIRONMENTAL RESEARCH CENTER,**
13 **a California non-profit corporation**

14 **Plaintiff,**

15 **vs.**

16 **INTEGRIS GLOBAL, L.P. and DOES 1-100**

17 **Defendants.**

CASE NO. CW 1305152

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
CIVIL PENALTIES, AND SPECIFIC
PERFORMANCE**

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

18
19 Plaintiff Environmental Research Center hereby alleges:

20 **I**

21 **INTRODUCTION**

22 1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this
23 action as a private attorney general enforcer and in the public interest pursuant to Health & Safety
24 Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and
25 civil penalties to remedy Integris Global, L.P. (hereinafter "Integris")' failure to warn consumers
26 that they are exposed to lead from several of Integris' nutritional health products. These "Covered
27 Products" are Integris Global L.P. E7 Essential Seven Natural Berry Flavor Nutritional Beverage
28 Mix, Integris Global L.P. Cardio-Health, and Integris Global L.P. Paragon. Lead is a chemical

1 known to the State of California to cause cancer, birth defects and other reproductive harm. Based
2 on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code section
3 25249.5 *et seq.*) also known as “Proposition 65,” businesses with ten or more employees must
4 provide a “clear and reasonable warning” prior to exposing persons to these chemicals.

5 2. Plaintiff ERC further brings this action for breach of contract. ERC and Integris are
6 parties to a settlement agreement and release involving the Covered Products sold by Integris in
7 violation of the warning requirements of Proposition 65. This complaint seeks specific performance
8 to remedy Integris’ breach of this settlement agreement and release requiring Integris to comply
9 with the warning requirements of Proposition 65 and its implementing regulations, and setting forth
10 specific language to be used in complying with said warning requirements.

11 **II**
12 **PARTIES**

13 3. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes,
14 helping safeguard the public from health hazards by reducing the use and misuse of hazardous and
15 toxic chemicals, facilitating a safe environment for consumers and employees and encouraging
16 corporate responsibility. ERC was a party to the settlement agreement and release with Integris
17 involving the Covered Products sold by Integris.

18 4. Defendant Integris is a business that manufactures, distributes and/or sells nutritional
19 health products that have exposed users to lead in the State of California within the relevant statute
20 of limitations period. Integris is a company subject to Proposition 65 as it employs ten or more
21 persons. Integris was a party to the settlement agreement and release with ERC involving the
22 Covered Products.

23 5. Defendants Does 1-100, are named herein under fictitious names, as their true names and
24 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of
25 said Does is responsible, in some actionable manner, for the events and happenings hereinafter
26 referred to, either through said Defendant’s conduct, or through the conduct of its agents, servants or
27 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
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1 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
2 to set forth the same.

3 **III**

4 **JURISDICTION AND VENUE**

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

7 7. This complaint is based in part on allegations contained in a Notice of Violation dated
8 July 19, 2013, served on the California Attorney General, other public enforcers and Integris. A
9 true and correct copy of this Notice of Violation is attached as Exhibit A. More than 60 days
10 have passed since this Notice of Violation was mailed and no public enforcement entity has filed
11 a complaint in this case.

12 8. This complaint is also based on the terms of a settlement agreement and release
13 executed on behalf of ERC on May 2, 2012, and on behalf of Integris on May 4, 2012 (hereinafter
14 “the Agreement”). The Agreement committed Integris to comply with the warning requirements of
15 Proposition 65. True and correct copies of the Agreement signed in counterparts by each party are
16 attached as Exhibit B.

17 9. This Court is a proper venue for this action because the causes of action have arisen in
18 the County of Marin where some of the violations of law have occurred. This Court is a proper
19 venue pursuant to the terms of the Agreement, which permit a legal action to enforce said
20 Agreement to be brought in any county of the State of California. Furthermore, this Court is a
21 proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section
22 25249.7, subdivisions (a) and (b)(1).

23 **IV**

24 **STATUTORY BACKGROUND**

25 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
26 passed as “Proposition 65” by an overwhelming majority vote of the people in November of 1986.

27 11. The warning requirement of Proposition 65 is contained in Health & Safety Code
28 section 25249.6, which provides:

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

4 12. Implementing regulations for Proposition 65 define expose as “to cause to ingest,
5 inhale, contact via body surfaces or otherwise come into contact with a listed chemical.” An
6 individual may come into contact with a listed chemical through water, air, food, consumer products
7 and any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,
8 § 25102, subd. (i).)

9 13. In this case, the exposures at issue are caused by consumer products. Implementing
10 regulations for Proposition 65 define a consumer product exposure as “an exposure which results
11 from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of
12 a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
13 Regs., tit. 27, § 25602, subd. (b).)

14 14. Whenever a clear and reasonable warning is required under Health & Safety Code
15 section 25249.6, the “method employed to transmit the warning must be reasonably calculated
16 considering the alternative methods available under the circumstances, to make the warning
17 message available prior to exposure.” (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
18 may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling,
19 signs, a system of signs, public advertising identifying the system and toll-free information services,
20 or any other, system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
21 25603.1, subd. (a)-(d).)

22 15. Proposition 65 establishes a procedure by which the State is to develop a list of
23 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
24 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
25 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead
26 was listed as a chemical known to the State of California to cause developmental toxicity in the
27 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
28

1 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.
2 27, § 27001.)

3 16. The Maximum Allowable Dose Level for lead as a chemical known to cause
4 reproductive toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
5 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
6 27, § 25705.)

7 17. Proposition 65 may be enforced by any person in the public interest who provides
8 notice sixty days before filing suit to both the violator and designated law enforcement officials.
9 The 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, subdivisions (c) and (d).

11 18. Proposition 65 provides that any person “violating or threatening to violate” Proposition
12 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,
13 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
14 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
15 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
16 (Health & Safety Code, § 25249.7, subd. (b)(1).)

17 **V**

18 **STATEMENT OF FACTS**

19 19. Integris has manufactured, distributed and/or sold the Covered Products containing
20 lead into the State of California. Consumers have been ingesting these products for many years,
21 without any knowledge of their exposure to lead, a very dangerous chemical.

22 20. For many years, Integris has knowingly and intentionally exposed numerous persons to
23 lead. Integris has at all times relevant hereto been aware that the Covered Products contained lead
24 and that persons using these products have been exposed to the chemical. Integris’ website
25 represents that it “developed strategic alliances with the world’s foremost manufacturers, leading
26 research scientists and product formulators” and “partners with only the very best nutritional
27 manufacturers following GMP (Good Manufacturing Practice) standards thus ensuring our
28 customers of safe and high quality [sic] products.” Experts with this level of knowledge and

1 experience would undoubtedly be aware that the ingredients used in many nutritional supplement
2 products can contain concentrations of lead that are unsafe, and exceed the limits imposed by
3 Proposition 65. Integris' claimed investment in the research and development of nutritional
4 supplement products indicates that the company has a thorough knowledge of the contents and
5 composition of its products, which would include knowledge of the presence of lead. Even if
6 Integris had somehow failed to note the presence of lead in its products during the process of
7 research and formulation, in 2011 the company received a Notice of Violation from ERC dated
8 August 5th informing it that the Covered Products contain lead. On November 3, 2011 Integris was
9 provided with ERC's own test results showing levels of lead significantly above those permitted by
10 Proposition 65.

11 21. In response to ERC's August 5, 2011 Notice of Violation and supporting test results
12 Integris entered into negotiations with ERC to settle claims related to the products listed in that
13 Notice, including the Covered Products. These negotiations culminated in the creation and
14 execution of the Agreement. The purposes of the Agreement were to address past sales of the
15 Covered Products in violation of Proposition 65, and to ensure that no future violations occurred.
16 Specifically, the Agreement prohibits Integris from directly selling or distributing into California
17 any of the Covered Products of which the maximum dose recommended on the label contains more
18 than 0.5 micrograms (mcg) of lead, unless each individual product displays a warning, the exact
19 language of which is specified in the Agreement. The Agreement was fully executed and became
20 effective on May 4, 2012. As part of its standard follow up activities, ERC reordered samples of the
21 Covered Products on May 7, 2013 from Integris' website. Upon delivery of the Covered Products,
22 ERC discovered that no warnings were included. The Covered Products ordered on May 7, 2013
23 were tested for lead on June 12, 2013. The results of these tests show that the Covered Products
24 continue to contain levels of lead well above those permitted by Proposition 65. ERC sent its
25 second Notice of Violation to Integris on July 19, 2013.

26 22. Given its contractual obligations under the Agreement, as well as its own product
27 research and development, Integris has unquestionably been aware of the lead in the Covered
28 Products, yet the company's website represents to the public that it has an "ongoing commitment to

1 ‘making a real difference with real nutrition’.” Regarding its “flagship product” Integris Global
2 L.P. E7 Essential Seven Natural Berry Flavor Nutritional Beverage Mix, the company even goes so
3 far as to recommend that “[i]f you had to choose one source for your nutritional needs, whether
4 male or female, young or old, E7™ is that source.” Integris has failed to disclose the presence of
5 lead in the Covered Products to the public, who undoubtedly believed they have been ingesting
6 totally healthy and pure products.

7 23. Both prior and subsequent to ERC’s Notice of Violation, Integris failed to provide
8 consumers of the Covered Products with a clear and reasonable warning that they have been
9 exposed to a chemical known to the State of California to cause cancer, birth defects and other
10 reproductive harm. On October 1, 2013, and once more on October 17, 2013 ERC reordered
11 samples of the Covered Products from Integris’ website. Upon receipt of the Covered Products
12 ordered on these dates, ERC discovered that the products now displayed warnings. Sometime after
13 receiving ERC’s July 19, 2013 Notice of Violation, Integris began including warnings on the
14 Covered Products indicating the presence of lead. However, the language of the warnings is
15 different from the language specifically required in the Agreement. Further, these warnings are not
16 clear and reasonable within the meaning of Proposition 65 and its implementing regulations because
17 they indicate that that the Covered Products cause exposure to lead levels known to cause cancer,
18 where no such lead levels were present in two of the three products (Integris Global L.P. E7
19 Essential Seven Natural Berry Flavor Nutritional Beverage Mix and Integris Global L.P. Paragon).

20 24. By failing to use the language required by the Agreement in warnings displayed on the
21 Covered Products, Integris has breached the Agreement. There is no adequate legal remedy for this
22 breach because the specific warning language required by the Agreement was formulated to ensure
23 that purchasers of the Covered Products were adequately warned of the presence of lead, without
24 diluting the warning’s impact by including unwarranted blanket references to cancer risk, or
25 diminishing the efficacy and significance of the warning through the inclusion of other superfluous
26 language.

27 25. ERC has performed all actions required of it under the Agreement.
28

1 **FIRST CAUSE OF ACTION**

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

4 26. ERC refers to paragraphs 1-25, inclusive, and incorporates them herein by this
5 reference.

6 27. By committing the acts alleged above, Integris has, in the course of doing business,
7 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to
8 the State of California to cause cancer, birth defects and other reproductive harm without first giving
9 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code
10 section 25249.6.

11 28. Said violations render Integris liable for civil penalties up to \$2,500 per day, for each
12 violation.

13 **SECOND CAUSE OF ACTION**

14 **(Declaratory Relief)**

15 29. ERC refers to paragraphs 1-28, inclusive, and incorporates them herein by this
16 reference.

17 30. There exists an actual controversy relating to the legal rights and duties of the parties,
18 within the meaning of Code of Civil Procedure section 1060, between ERC and Integris concerning
19 whether Integris has exposed individuals to a chemical known to the State of California to cause
20 cancer, birth defects and other reproductive harm without providing clear and reasonable warning.

21 **THIRD CAUSE OF ACTION**

22 **(Breach of Contract and Specific Performance)**

23 31. ERC refers to paragraphs 1-30, inclusive, and incorporates them herein by this
24 reference.

25 32. By committing the acts alleged above, Integris has breached its Agreement with ERC,
26 for which no adequate legal remedy exists.

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VI

PRAYER

WHEREFORE ERC prays for relief as follows:

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

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

3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring that Integris has exposed individuals to a chemical known to the State of California to cause, birth defects and other reproductive harm without providing clear and reasonable warning;

4. On the Third Cause of Action, for a decree ordering specific performance of the terms of the Agreement;

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

6. On the Third Cause of Action, for reasonable attorneys' fees pursuant to section 18 of the Agreement;

7. For costs of suit herein; and

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

Dated: December 13, 2013

By



Michael Freund
Ryan Hoffman
Attorneys for Environmental Research Center



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

July 19, 2013

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of the Environmental Research Center (“ERC”). 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 Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

Alleged Violators. The name of the company covered by this notice that violated Proposition 65 (hereinafter referred to as the “Violator”) is:

Integrus Global, L.P.

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

- **Integrus Global L.P. E7 Essential Seven Natural Berry Flavor Nutritional Beverage Mix – Lead**
- **Integrus Global L.P. Cardio-Health – Lead**
- **Integrus Global L.P. Paragon – Lead**

Exhibit A

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 19, 2010, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall, Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Integris Global, L.P. and its Registered Agent for Service of Process

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

only)

**Re: Environmental Research Center's Notice of Proposition 65 Violations by
Integris Global, L.P.**

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-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.

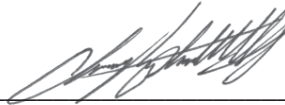
2. I am the Executive Director for the noticing party.

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

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

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: July 19, 2013



Chris Heptinstall

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On July 19, 2013, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Integris Global, L.P.
811 Barton Spring Road, Suite 400
Austin, TX 78704

Alexander M. Parker
(Integris Global, L.P.’s Registered
Agent for Service of Process)
15851 Dallas Parkway, Suite 1220
Addison, TX 75001

Current CEO or President
Integris Global, L.P.
811 Barton Springs Road, Suite 400A
Austin, TX 78704


Current CEO or President
Integris Global, L.P.
6101 W Courtyard Dr #5
Austin, TX 78730

On July 19, 2013, I electronically served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 19, 2013, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on July 19, 2013, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

July 19, 2013

Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is made effective on the date last executed herein (“Effective Date”) by and between **Environmental Research Center** (“ERC”) and **Integris Global, LP** (“IG”). ERC and IG are hereinafter referred to collectively as the “Parties”. The Parties agree as follows:

1. This Agreement is limited to this Matter, which is defined as all claims and allegations related to the Notice of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on IG on August 5, 2011 (the “Notice”), and the following products identified in the Notice, namely:

E7 Essential Seven Natural Berry Flavor Nutritional Beverage Mix
Paragon
Cleanzyme
Cardio-Health

(collectively, the above products shall be referred to herein as the “Covered Products”).

2. For purposes of this Agreement, IG acknowledges that they are a “person in the course of doing business” within the meaning of Proposition 65.

3. Nothing in this Agreement shall be construed, nor constitute, as an admission of IG of any fact, issue of law, or violation of law. The Parties agree that this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

4. In consideration of the following covenants of IG, and the other conditions contained in this Agreement, ERC releases IG as set forth in Paragraph 8. below:

a. IG agrees that after the Effective Date, IG shall not distribute into the state of California, directly sell into the State of California, or supply its Independent Business Owners (“IBOs”), wherever located, for sale into the State of California any Covered Product for which the maximum dose recommended on the label contains more than 0.5 micrograms (mcg) of lead, unless each individual product (in the form intended for sale to the end user) bears one of the warning statements specified in 3.b. below on its individual unit label or unit packaging.

b. If the daily lead exposure level is greater than 0.5 micrograms (mcg) for any lot of the Covered Products, the following warning shall be provided on the product labels of any of the product from that lot distributed in California, sold in California, or supplied to IBOs, wherever located, for sale in California:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

c. If the daily lead exposure level is 15 micrograms (mcg) or greater for any lot of the Covered Products, the following warning shall be provided on the product labels of any of the product from that lot distributed in California, sold in California, or supplied to IBOs, wherever located, for sale in California:

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

d. In the event that a warning is used, the warning shall be prominently and securely affixed to or printed upon the product label so as to be clearly conspicuous in accordance with Section 25603.1 of the California Code of Regulations, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product. If the warning is displayed on the product label, the warning shall be at least the same size as the largest of any other health or safety warnings on the product and the word “warning” shall be in all capital letters and in bold print.

e. If any of the Covered Products requires a warning pursuant to Paragraph 4.b. or 4.c., and only in instances where the Covered Product is contained or made part of a multiple product package or kit, the appropriate Proposition 65 warning label may be placed on the outside container or wrapping enclosing the multiple products as long as the warning complies with Paragraph 4.d. and also clearly identifies the particular Covered Product to which the warning applies. This provision would not apply in instances where products were combined in one box for shipping purposes.

f. IG acknowledges that as of the Effective Date they have discontinued the distribution and sales of the product Cardio Health in California, and IG agrees they will not reintroduce that product into the California marketplace, meaning they will not market, distribute, sell, or supply to IBOs, wherever located, for sale in California that product as currently formulated unless labeled with a Proposition 65 “cancer” warning pursuant to paragraph 4.c.

g. If the formula of the Covered Products is altered by the inclusion of a new or different ingredient (“New Ingredient”) then, IG agrees to conduct Lead testing of such New Ingredient. Additionally, if any of the ingredients in the Covered Products is sourced from a supplier different from that used for the Covered Products as of the effective date of this Agreement (the “New Source”), then IG agrees to conduct Lead testing of the Covered Products supplied by the New Source.

h. In the event that IG is required to conduct testing pursuant to Paragraph 4.g., IG shall test at least three (3) randomly selected samples of the Covered Products (in the form intended for sale to the end-user) to determine if the Products comply with Proposition 65, which at the time this Agreement is written means the daily exposure of Lead is no more than 0.5 micrograms (mcg) when taken as directed on the Covered Products’ label, or the appropriate warning is on the product. All testing done pursuant to Paragraph 4.g. is to be performed by a laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. Testing under this section shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and

closed-vessel, microwave-assisted digestion employing high-purity reagents, or other testing methods recommended at the time of the testing by the California Attorney General's Office, or any other testing method agreed upon in writing by the Parties.

i. The method of selecting samples for testing under Paragraph 4.g. shall comply with the regulations of the Food and Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c).

j. If testing is required pursuant to Paragraph 4.g. IG shall arrange for copies of all test results and related laboratory report documentation relating to the testing for lead content of each of the Covered Products to be automatically sent by the testing laboratories directly to ERC within ten (10) business days after IG's receipt of such testing results.

k. IG shall have no duty to continue the above described testing required under Paragraph 4.g. after a minimum of three (3) tests confirm the daily lead exposure level of the Covered Products is in compliance with Proposition 65.

l. For purposes of this Agreement, daily lead exposure levels shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product (lead content found using the above described testing), multiplied by grams of product per serving of the product (using the serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), equals micrograms of lead exposure per day.

m. Nothing in this Agreement shall limit IG's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

5. In full and final satisfaction of civil penalties, payment in lieu of further civil penalties, ERC's expenses and costs of investigation, and ERC's attorney fees, IG shall make a total payment of \$60,000.00 ("Total Settlement Amount"). Paragraphs 5.a-5.e below describe the agreed partition and timing of payments of the Total Settlement Amount.

a. As a portion of the Total Settlement Amount, \$8,281.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$6,211.00) of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$2,070.00) of the civil penalty.

b. As a portion of the Total Settlement Amount, \$24,844.00 shall be considered a payment to ERC in lieu of further civil penalties for activities such as (1) funding the investigating, researching and testing of consumer products that may contain Proposition 65 listed chemicals; (2) funding grants to California non-profit foundations/entities dedicated to public health; (3) funding the ERC Eco Scholarship Fund for high school students in California interested in pursuing an education in the field of environmental sciences; (4) funding ERC's Operation Education Program designed to provide funding to educators in the State of California public school system for creative and effective environment and environmental sciences teaching

projects; (5) funding ERC's Voluntary Compliance Program to work with companies not subject to Proposition 65 to reformulate their products to reduce potential consumer exposures to Proposition 65 listed chemicals; (6) funding ERC's RxY Program to assist various medical personnel to provide testing assistance to independent distributors of various products; (7) funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (8) funding post-settlement monitoring of past consent judgments; (9) funding to maintain ERC's database of lead-free products, Proposition 65-compliant products and contaminated products; (10) funding to track and catalog Proposition 65-compliant, contamination-free sources of ingredients used in the products ERC tests; (11) funding ERC's Cancer Scholarship Fund; and (12) funding the continued enforcement of Proposition 65 matters which address contaminated ingestible products, similar to the subject matter of this Action.

c. As a portion of the Total Settlement Amount, \$13,875.00 shall be considered a reimbursement to ERC for its reasonable investigation costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this matter to IG's attention, and negotiating a settlement in the public interest.

d. As a portion of the Total Settlement Amount, \$13,000.00 shall be considered a reimbursement to ERC for its attorney fees.

e. Within 5 days of the Effective Date, IG shall pay ERC the sum of ten thousand dollars, (\$10,000.00); within 35 days of the Effective Date, IG shall pay ERC the sum of ten thousand dollars (\$10,000.00); and for the next 4 months, due on the 1st day of each month, IG shall pay ERC the sum of ten thousand dollars (\$10,000.00) by checks made payable to "Environmental Research Center" and sent by first-class registered or certified mail, or overnight delivery, to ERC's counsel Karen A. Evans at the Law Office of Karen A. Evans, 4218 Bionia Place, San Diego, California 92116. In the event that any payment owed under this Agreement is not remitted on or before its due date, IG shall be deemed to be in default of its obligations under this Agreement and all future payments shall become immediately due and payable with the California statutory interest rate applying to all interest accruing on unpaid balances due hereunder, beginning on the due date of the funds in default.

6. IG shall bear any and all of its own costs, expenses, and attorney fees related to this matter.

7. In consideration of the following covenant of ERC, and the other terms and conditions contained in this Agreement, IG releases the claims against ERC as set forth in Paragraph 9 below:

8. ERC acting on its own behalf releases IG from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead from the Covered Products as set forth in the Notice.

9. ERC, on its own behalf only, on one hand, and IG, on the other hand, release and waive any claims they may have against each other, and their officers, directors, employees, agents, representatives, and attorneys ("the Releasees") for all actions or statements made or undertaken

by the Releasees in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

10. Nothing in this Agreement is intended to apply to any claims for occupational or environmental exposures, which result in injury to consumers arising under Proposition 65, nor shall it apply to any of IG's products other than the Covered Products.

11. Nothing herein shall be construed as diminishing IG's continuing obligations to comply with Proposition 65.

12. After execution of the Agreement, ERC will submit to the California Attorney General a Report of Settlement on Form JUS 1501, or as currently required by the California Attorney General, and shall submit a copy of the Report of Settlement to IG. In addition, ERC will provide to the California Attorney General the fully signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding the Matter, its settlement, and this Agreement.

13. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by all parties to this Agreement.

14. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

15. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion this Agreement. It is conclusively presumed all of the Parties participated equally in the preparation and drafting of this Agreement.

16. If any provision, term or section of this Agreement is found to be invalid, illegal or unenforceable, all remaining provisions, terms or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term or section of this Agreement is determined to be unenforceable, such provision, term or section may be modified so that the unenforceable provision, term or section is enforceable to the greatest extent possible.

17. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

18. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing

party in any such legal action shall be entitled to recover for its attorney fees in addition to any other legally recoverable costs.

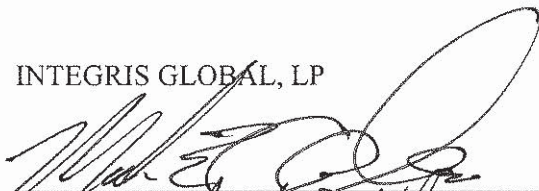
19. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail or other copies of this Agreement or any counterparts, shall be deemed to be an original.

20. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the party for whom they execute to the terms and conditions of this Agreement.

21. For purposes of this Agreement, the term "Persons" shall mean any individual, corporation, partnership, firm, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization, governmental entity or other entity.

DATED: 5/4/12

INTEGRIS GLOBAL, LP

By: 
Print Name: Mark E. Hedges
Title: Chief Executive Officer

DATED: _____

ENVIRONMENTAL RESEARCH CENTER

By: _____
Chris Heptinstall, Executive Director

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**E7 Essential Seven Natural Berry Flavor Nutritional Beverage Mix
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(collectively, the above products shall be referred to herein as the "Covered Products").

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

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closed-vessel, microwave-assisted digestion employing high-purity reagents, or other testing methods recommended at the time of the testing by the California Attorney General's Office, or any other testing method agreed upon in writing by the Parties.

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projects; (5) funding ERC's Voluntary Compliance Program to work with companies not subject to Proposition 65 to reformulate their products to reduce potential consumer exposures to Proposition 65 listed chemicals; (6) funding ERC's RxY Program to assist various medical personnel to provide testing assistance to independent distributors of various products; (7) funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (8) funding post-settlement monitoring of past consent judgments; (9) funding to maintain ERC's database of lead-free products, Proposition 65-compliant products and contaminated products; (10) funding to track and catalog Proposition 65-compliant, contamination-free sources of ingredients used in the products ERC tests; (11) funding ERC's Cancer Scholarship Fund; and (12) funding the continued enforcement of Proposition 65 matters which address contaminated ingestible products, similar to the subject matter of this Action.

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9. ERC, on its own behalf only, on one hand, and IG, on the other hand, release and waive any claims they may have against each other, and their officers, directors, employees, agents, representatives, and attorneys ("the Releasees") for all actions or statements made or undertaken

by the Releasees in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

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14. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

15. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion this Agreement. It is conclusively presumed all of the Parties participated equally in the preparation and drafting of this Agreement.

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18. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing

party in any such legal action shall be entitled to recover for its attorney fees in addition to any other legally recoverable costs.

19. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail or other copies of this Agreement or any counterparts, shall be deemed to be an original.

20. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the party for whom they execute to the terms and conditions of this Agreement.

21. For purposes of this Agreement, the term "Persons" shall mean any individual, corporation, partnership, firm, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization, governmental entity or other entity.

DATED: _____

INTEGRIS GLOBAL, LP

By: _____
Print Name: _____
Title: _____

DATED: 5/2/2012

ENVIRONMENTAL RESEARCH CENTER

By: 
Chris Heptinstall, Executive Director