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 8 ENVIRONMENTAL RESEARCH CENTER, INC.

FILED BY FAX
 ALAMEDA COUNTY

August 07, 2018

CLERK OF
 THE SUPERIOR COURT
 By Alicia Espinoza, Deputy

CASE NUMBER:
RG18915863

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 NUTRAKEY, LLC, a Florida limited liability
 17 company,

18 Defendant.

CASE NO.

**COMPLAINT FOR INJUNCTIVE
 RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.5, *et seq.*

21
 22 Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. (“Plaintiff” or “ERC”)
 23 brings this action in the interests of the general public and hereby alleges:

24 **INTRODUCTION**

25 1. This action seeks to remedy the continuing failure of Defendant NUTRAKEY, LLC
 26 (“NUTRAKEY” or “DEFENDANT”) to warn consumers in California that they are being
 27 exposed to lead, a substance known to the State of California to cause cancer, birth defects, and
 28 other reproductive harm.

1 2. DEFENDANT manufactures, packages, distributes, markets, and/or sells, in
2 California, certain PRODUCTS containing lead, including each of the following products
3 (“PRODUCTS”): (1) N NutraKey Iso Optima With Hydrolyzed Whey Protein Isolate Chocolate
4 Ice Cream Swirl, (2) N NutraKey Health Performance Inc. Hydro Pump Strawberry Lemonade,
5 (3) N NutraKey Health Performance Inc. Hydro Pump Cotton Candy, (4) N NutraKey Health
6 Performance Inc. Hydro Pump, (5) N NutraKey Whey Optima Premium Protein Complex
7 Chocolate Lava Cake, (6) N NutraKey Whey Optima Premium Protein Complex Cookies &
8 Cream, (7) N NutraKey Raw Plant Protein VPro Vanilla (8) N NutraKey Raw Plant Protein
9 VPro Vegan Mochaccino, (9) N NutraKey Health Performance Inc. Spirulina Antioxidant
10 Superfood, (10) N NutraKey Health Performance Inc. Antler Test Strength & Muscle Builder,
11 (11) N NutraKey Whey Optima Premium Protein Complex Salted Caramel Peanut Butter Cup,
12 and (12) N NutraKey Whey Optima Premium Protein Complex Vanilla Ice Cream Cookie.

13 3. Lead and lead compounds (hereinafter, the “LISTED CHEMICAL”) are substances
14 known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.
15 Proposition 65 requires that consumers must be warned before they are exposed to the LISTED
16 CHEMICAL.

17 4. The ingestion of the PRODUCTS causes exposures to the LISTED CHEMICAL at
18 levels requiring a “clear and reasonable warning” under California's Safe Drinking Water and
19 Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”) Section 25249.5, *et seq.*
20 (also known and referred to herein as “Proposition 65”).

21 5. DEFENDANT has failed to provide the health hazard warnings required by
22 Proposition 65.

23 6. DEFENDANT’s past and continuing manufacturing, packaging, distributing,
24 marketing, and/or sales of the PRODUCTS, without the required health hazard warnings, causes
25 or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of the
26 LISTED CHEMICAL that violate or threaten to violate Proposition 65. As a proximate result
27
28

¹All statutory and regulatory references herein are to California law, unless otherwise specified.

1 of these actions, DEFENDANT has violated, is violating, and will continue to violate,
2 Proposition 65.

3 7. Plaintiff seeks injunctive relief enjoining DEFENDANT from the continued
4 manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS in
5 California without provision of clear and reasonable warnings regarding the risks of cancer,
6 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL
7 through the ingestion of the PRODUCTS. Plaintiff seeks an injunctive order compelling
8 DEFENDANT to bring its business practices into compliance with Proposition 65 by providing
9 a clear and reasonable warning to each individual who has been, and who in the future may be,
10 exposed to the LISTED CHEMICAL from the ingestion of the PRODUCTS. Plaintiff also
11 seeks an order compelling DEFENDANT to identify and locate each individual person who has
12 purchased the PRODUCTS in the past, and to provide to each such purchaser a clear and
13 reasonable warning that ingestion of the PRODUCTS will cause exposures to the LISTED
14 CHEMICAL.

15 8. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties up to
16 the maximum civil penalty of \$2,500 per day per exposure authorized by Proposition 65 to
17 remedy DEFENDANT's failure to provide clear and reasonable warnings regarding exposures
18 to the LISTED CHEMICAL.

19 **JURISDICTION AND VENUE**

20 9. This Court has jurisdiction over this action pursuant to California Constitution
21 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
22 except those given by statute to other trial courts." The statute under which this action is
23 brought does not specify any other basis for jurisdiction.

24 10. This Court has jurisdiction over DEFENDANT because, based on information and
25 belief, DEFENDANT is a business having sufficient minimum contacts with California, or
26 otherwise intentionally availing itself of the California market through the distribution and sale
27 of the PRODUCTS in the State of California, to render the exercise of jurisdiction over it by the
28 California courts permissible under traditional notions of fair play and substantial justice.

1 11. Venue in this action is proper in this Court because the DEFENDANT has violated
2 or threatens to violate California law in the County of Alameda.

3 **PARTIES**

4 12. Plaintiff ERC is a non-profit corporation organized under California's Corporation
5 Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and
6 toxic substances, consumer protection, worker safety, and corporate responsibility.

7 13. ERC is a person within the meaning of H&S Code Section 25118 and brings this
8 enforcement action in the public interest pursuant to H&S Code Section 25249.7(d).

9 14. DEFENDANT NUTRAKEY is a limited liability company organized under the laws
10 of the State of Florida and is a person doing business within the meaning of H&S Code Section
11 25249.11. DEFENDANT manufactures, packages, distributes, markets, and/or sells the
12 PRODUCTS for sale or use in California and in Alameda County.

13 **STATUTORY BACKGROUND**

14 15. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
15 passed as "Proposition 65" by a vote of the People of the State of California in 1986. In passing
16 Proposition 65, the People declared in their right "[t]o be informed about exposures to
17 chemicals that cause cancer, birth defects, or other reproductive harm." Section 1(b) of Initiative
18 Measure, Proposition 65.

19 16. To effectuate this goal, Proposition 65 requires that individuals be provided with a
20 "clear and reasonable warning" before being exposed to substances listed by the State of
21 California as causing cancer or reproductive toxicity. H&S Code Section 25249.6 states, in
22 pertinent part:

23 No person in the course of doing business shall knowingly and intentionally
24 expose any individual to a chemical known to the state to cause cancer or
25 reproductive toxicity without first giving clear and reasonable warning to such
individual....

26 17. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of, or
27 exposure to a chemical listed pursuant to H&S Code Section 25249.8(a) of the Act is occurring.
28 No knowledge that the discharge, release, or exposure is unlawful is required." 27 California

1 Code of Regulations (“CCR”) § 25102(n).

2 18. Proposition 65 establishes a procedure by which the Governor lists chemical known
3 to the state to cause cancer or reproductive toxicity. H&S Code § 25249.8. The warning
4 requirements under Proposition 65 for a given chemical go into effect one year after the
5 Governor places that chemical on the list. H&S Code § 25249.10(b).

6 19. Proposition 65 provides that any “person who violates or threatens to violate” the
7 warning requirements of the statute may be enjoined in a court of competent jurisdiction. H&S
8 Code § 25249.7. The phrase “threaten to violate” is defined to mean creating “a condition in
9 which there is a substantial probability that a violation will occur.” H&S Code § 25249.11(e).

10 20. Violators are liable for civil penalties of up to \$2,500 per day for each violation of
11 the Act. H&S Code § 25249.7.

12 **FACTUAL BACKGROUND**

13 21. On February 27, 1987, the State of California officially listed the chemical lead as a
14 chemical known to cause reproductive toxicity. Lead became subject to the warning
15 requirement one year later and was therefore subject to the “clear and reasonable” warning
16 requirements of Proposition 65 beginning on February 27, 1988. H&S Code § 25249.5, *et seq.*;
17 27 CCR § 25000, *et seq.* Due to the high toxicity of lead, the maximum allowable dose level for
18 lead is 0.5 micrograms a day (“µg/day”) for reproductive toxicity. 27 CCR § 25805(b).

19 22. On October 1, 1992, the State of California officially listed the chemicals lead and
20 lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject
21 to the warning requirement one year later and were therefore subject to the “clear and
22 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. 27 CCR
23 § 25102, *et seq.*; H&S Code § 25249.6, *et seq.* Due to the carcinogenicity of lead, the no
24 significant risk level for lead is 15 µg/day. 27 CCR § 25705(b)(1).

25 23. The PRODUCTS have been sold by DEFENDANT for use in California since at least
26 May 10, 2015.

27 24. To test DEFENDANT’s PRODUCTS for lead, Plaintiff hired a well-respected and
28 accredited testing laboratory. The results of testing undertaken by Plaintiff of DEFENDANT’s

1 PRODUCTS show that the PRODUCTS were in violation of the 0.5 µg/day "safe harbor" daily
2 dose limits for lead set forth in Proposition 65's regulations. Very significant is the fact that
3 people are being exposed to lead through ingestion as opposed to other, less harmful, methods of
4 exposure such as dermal exposure. Ingestion of lead produces much higher exposure levels and
5 health risks than dermal exposure to this chemical.

6 25. At all times relevant to this action, DEFENDANT, therefore, has knowingly and
7 intentionally exposed the users of the PRODUCTS to the LISTED CHEMICAL without first
8 giving a clear and reasonable warning to such individuals.

9 26. On May 10, 2018, Plaintiff served NUTRAKEY and each of the appropriate public
10 enforcement agencies with a 60-Day Notice of Proposition 65 violations document entitled
11 "Notice of Violations of California Health & Safety Code §25249.5 ("Notice"). A true and
12 correct copy of the Notice is attached hereto as Exhibit A and incorporated by reference. The
13 Notice was issued pursuant to, and in compliance with, the requirements of H&S Code Section
14 25249.7(d) and the statute's implementing regulations regarding the notice of the violations to
15 be given to certain public enforcement agencies and to the violator. The Notice included, *inter*
16 *alia*, the following information: the name, address, and telephone number of the noticing
17 individual; the name of the alleged violator; the statute violated; the approximate time period
18 during which violations occurred; and descriptions of the violations, including the chemical
19 involved, the route of toxic exposure, and the specific product or type of product causing the
20 violations, and was issued as follows:

- 21 a. NUTRAKEY was provided a copy of the Notice by Certified Mail;
- 22 b. NUTRAKEY was provided a copy of a document entitled "The Safe
23 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
24 Summary," which is also known as Appendix A to Title 27 of CCR
25 Section 25903;
- 26 c. The California Attorney General was provided a copy of the Notice via
27 online submission; and
- 28 d. The California Attorney General was provided with a Certificate of Merit

1 by the attorney for the noticing party, stating that there is a reasonable
2 and meritorious case for this action, and attaching factual information
3 sufficient to establish a basis for the certificate, including the identity of
4 the persons consulted with and relied on by the certifier, and the facts,
5 studies, or other data reviewed by those persons, pursuant to H&S Code
6 Section 25249.7(h) (2).

7 e. The District Attorneys, city attorneys or prosecutors of each jurisdiction
8 within which the PRODUCTS are offered for sale within California were
9 provided with a copy of the Notice via first class mail or electronic
10 submission pursuant to H&S Code Section 25249.7(d)(1).

11 27. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures
12 without the warnings required by Proposition 65 since at least May 10, 2017, the one-year period
13 preceding the Notice. These exposures entitle the Court to award civil penalties for the
14 applicable statutory penalty period, which is one year prior to the date of the Notice of Violation.
15 CCP § 340; *Consumer Advocacy Group, Inc.*, 150 Cal.App.4th at 981.

16 28. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures
17 without the warnings required by Proposition 65 since at least May 10, 2015, the three-year
18 period preceding the Notice that is relevant to Plaintiff's prayer for injunctive relief. H&S Code
19 § 25249.7(a); CCP § 338.

20 29. The imposition of a civil penalty will have a deterrent economic effect in that it is
21 likely to deter future conduct in violation of Proposition 65 by NUTRAKEY and the regulated
22 community as a whole.

23 30. The PRODUCTS continue to be distributed and sold in California without the
24 requisite warning information.

25 31. At least 60 days have elapsed since Plaintiff sent the Notice to DEFENDANT. The
26 appropriate public enforcement agencies have failed to commence and diligently prosecute a
27 cause of action under Proposition 65 against DEFENDANT based on the allegations herein.

28 32. As a proximate result of acts by DEFENDANT, as a person in the course of doing

1 business within the meaning of H&S Code Section 25249.11, individuals throughout the State
2 of California, including in the County of Alameda, have been exposed to the LISTED
3 CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal
4 exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons
5 exposed to the PRODUCTS.

6 **FIRST CAUSE OF ACTION**

7 **(Injunctive Relief for Violations of Health and Safety Code Section 25249.5, et seq.
8 Concerning the PRODUCTS Described in the May 10, 2018 Proposition 65 Notice
9 By Plaintiff Against NUTRAKEY)**

10 33. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully
11 set forth herein.

12 34. By committing the acts alleged in this Complaint DEFENDANT, at all times
13 relevant to this action and continuing through the present, has violated H&S Code Section
14 25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals
15 who ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first
16 providing a clear and reasonable warning to such individuals pursuant to H&S Code Sections
17 25249.6 and 25249.11(f).

18 35. By the above-described acts, DEFENDANT has violated H&S Code Section
19 25249.6 and is therefore subject to an injunction ordering DEFENDANT to stop violating
20 Proposition 65, to provide warnings to all present and future customers, and to provide warnings
21 to DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a
22 clear and reasonable warning.

23 36. An action for injunctive relief under Proposition 65 is specifically authorized by
24 H&S Code Section 25249.7(a).

25 37. Continuing commission by DEFENDANT of the acts alleged above will irreparably
26 harm the citizens of the State of California, for which harm they have no plain, speedy, or
27 adequate remedy at law.

28 Wherefore, Plaintiff prays judgment against DEFENDANT, as set forth hereafter.

///

1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties for Violations of Health and Safety Code Section 25249.5, et seq.**
3 **Concerning the PRODUCTS Described in the May 10, 2018 Proposition 65 Notice**
4 **By Plaintiff Against NUTRAKEY)**

5 38. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully
6 set forth herein.

7 39. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code
8 Section 25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful
9 exposure to the LISTED CHEMICAL from the PRODUCTS.

10 Wherefore, Plaintiff prays for judgment against NUTRAKEY, as set forth hereafter.

11 **THE NEED FOR INJUNCTIVE RELIEF**

12 40. Plaintiff realleges and incorporates by this reference all preceding paragraphs as if
13 set forth below.

14 41. By committing the acts alleged in this Complaint, DEFENDANT has caused
15 irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the absence
16 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury
17 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
18 CHEMICAL through the ingestion of the PRODUCTS.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff accordingly prays for the following relief:

21 A. A temporary restraining order, preliminary and permanent injunction,
22 pursuant to H&S Code Section 25249.7(a), enjoining DEFENDANT, its agents,
23 employees, assigns and all persons acting in concert or participating with
24 DEFENDANT, from distributing or selling the PRODUCTS in California without
25 first providing a clear and reasonable warning, within the meaning of Proposition 65,
26 that the ingestion of the PRODUCTS exposes consumers to the LISTED
27 CHEMICAL;

28 B. An injunctive order, pursuant to H&S Code Section 25249.7(a),
compelling DEFENDANT to identify and locate each individual who has purchased

1 the PRODUCTS since May 10, 2015 and to provide a warning to each such person
2 that the use of the PRODUCTS will expose the user to a chemical known to cause
3 cancer, birth defects, and other reproductive harm;

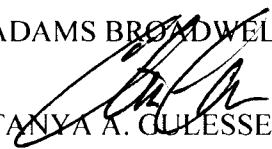
4 C. An assessment of civil penalties pursuant to H&S Code Section
5 25249.7(b), against DEFENDANT in the amount of \$2,500 per day for each
6 violation of Proposition 65;

7 D. An award to Plaintiff of its reasonable attorneys' fees and costs of suit
8 pursuant to California Code of Civil Procedure Section 1021.5, as Plaintiff shall
9 specify in further application to the Court; and

10 E. Such other and further relief as may be just and proper.

11
12 Dated: August 7, 2018

ADAMS BROADWELL JOSEPH & CARDOZO

13 
14 TANYA A. GULESSERIAN
15 CHRISTINA M. CARO
16 Attorneys for Plaintiff
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EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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May 10, 2018

VIA CERTIFIED MAIL

Chris Wagner or Current CEO
NutraKey, LLC
975 Bennett Drive
Longwood, FL 32750

Richard McIntyre, Esquire
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Lake Mary, FL 32746

VIA ONLINE SUBMISSION

Office of the California Attorney General

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VIA FIRST CLASS MAIL

District Attorneys of Select 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 represent the Environmental Research Center, Inc. (“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 name of the Company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

NutraKey, LLC

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

1. **N NutraKey Iso Optima With Hydrolyzed Whey Protein Isolate Chocolate Ice Cream Swirl - Lead**
2. **N NutraKey Health Performance Inc. Hydro Pump Strawberry Lemonade - Lead**
3. **N NutraKey Health Performance Inc. Hydro Pump Cotton Candy - Lead**
4. **N NutraKey Health Performance Inc. Hydro Pump - Lead**
5. **N NutraKey Whey Optima Premium Protein Complex Chocolate Lava Cake - Lead**
6. **N NutraKey Whey Optima Premium Protein Complex Cookies & Cream - Lead**
7. **N NutraKey Raw Plant Protein VPro Vanilla - Lead**
8. **N NutraKey Raw Plant Protein VPro Vegan Mochaccino - Lead**
9. **N NutraKey Health Performance Inc. Spirulina Antioxidant Superfood - Lead**
10. **N NutraKey Health Performance Inc. Antler Test Strength & Muscle Builder - Lead**
11. **N NutraKey Whey Optima Premium Protein Complex Salted Caramel Peanut Butter Cup - Lead**
12. **N NutraKey Whey Optima Premium Protein Complex Vanilla Ice Cream Cookie - Lead**

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

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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, is enclosed with the copy of this letter to the Violator.

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

May 10, 2018

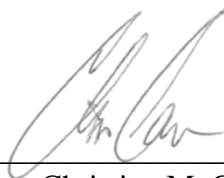
Page 4

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since May 10, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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 the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client'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 chemical and expensive and time-consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to NutraKey, LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by NutraKey, LLC**

I, Christina Caro, 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: May 10, 2018



Christina M. Caro

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

May 10, 2018

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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On May 10, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chris Wagner or Current CEO
NutraKey, LLC
975 Bennett Drive
Longwood, FL 32750

Richard McIntyre, Esquire
(Registered Agent for NutraKey, LLC)
1540 International Parkway, Suite 2000
Lake Mary, FL 32746

On May 10, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 10, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Dije Ndreu, Deputy District Attorney
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Michelle Latimer, Program Coordinator
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mlatimer@co.lassen.ca.us

Allison Haley, District Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 10, 2018

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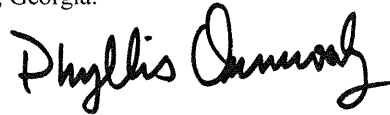
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 10, 2018
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On May 10, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 10, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

Phyllis Dunwoody

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Service List

District Attorney, Alameda County
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San Andreas, CA 95249

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Colusa, CA 95932

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Crescent City, CA 95531

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Placerville, CA 95667

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Fresno, CA 93721

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Willows, CA 95988

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Quincy, CA 95971

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Modesto, CA 95354

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Marysville, CA 95901

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Los Angeles, CA 90012

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1 Dr Carlton B Goodlett PL
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San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for

² See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.