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10 Attorneys for Defendants
Atkins Nutritionals, Inc. and
North Castle Partners, L.L.C.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 ENVIRONMENTAL RESEARCH
15 CENTER, a California non-profit
16 corporation,

17 Plaintiff,

18 v.

19 ATKINS NUTRITIONALS, INC.,
20 ATKINS NUTRITIONALS HOLDINGS,
INC., NORTH CASTLE PARTNERS,
21 L.L.C., and DOES 1-50, inclusive,

22 Defendant.

Case No. CGC-11-513819

~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT

24
25 **1. INTRODUCTION**

26 1.1 This Action arises out of alleged violations of California's Safe Drinking Water
27 and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.5, *et seq.* (also
28 known as and hereinafter referred to as "Proposition 65").

ENDORSED
FILED
San Francisco County Superior Court

NOV 08 2012

CLERK OF THE COURT

BY: GINA GONZALES
Deputy Clerk

1 1.2 Plaintiff Environmental Research Center, Inc. (“ERC”), a California non-profit
2 corporation acting as a private enforcer of Proposition 65, brings this Action in the public interest
3 pursuant to California Health and Safety Code § 25249.7(d).

4 1.3 Defendant Atkins Nutritionals, Inc. is a New York corporation, and Defendant
5 North Castle Partners, L.L.C. is a Delaware corporation. Defendants Atkins Nutritionals, Inc.
6 and North Castle Partners, L.L.C. are hereinafter referred to collectively as “Defendants”. For
7 the purposes of this Consent Judgment, Defendants acknowledge that they each employ ten or
8 more persons, and each is a “person in the course of doing business” within the meaning of
9 Proposition 65.

10 1.4 Defendants and ERC are hereinafter sometimes referred to individually as a
11 “Party” or collectively as the “Parties”.

12 1.5 On September 24, 2010, pursuant to California Health and Safety Code
13 § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”)
14 on the California Attorney General, other public enforcers, and Defendants. A true and correct
15 copy of the Notice of Violations is attached hereto as Exhibit A. The Notice of Violations
16 contains allegations that Defendants, without giving a required clear and reasonable warning,
17 have exposed and continue to expose individuals in California to lead, a chemical listed under
18 Proposition 65 as a carcinogen and reproductive toxin, by manufacturing, marketing, distributing
19 and/or selling the product Atkins Nutritionals, Inc. Day Break Peanut Butter Fudge Crisp Bar
20 (the “Covered Product”). Neither the California Attorney General nor any other public enforcer
21 has filed suit against Defendants with regard to the Covered Product or the alleged violations.

22 1.6 More than 60 days after service of the Notice of Violations, ERC filed the
23 Complaint in this Action (the “Complaint”) for injunctive relief and civil penalties. The
24 Complaint, based on the Notice of Violations, contains allegations that Defendants have exposed
25 and continue to expose persons in California who use and/or handle the Covered Product to the
26 chemical lead in excess of the exposure levels allowed under Proposition 65 without first
27 providing clear and reasonable warnings, in violation of California Health and Safety Code §
28 25249.6. Defendants deny all material allegations contained in the Notice of Violations and the

1 Complaint, assert numerous affirmative defenses to the allegations of violations, and specifically
2 deny that the Covered Product requires Proposition 65 warnings or otherwise harm any person.

3 1.7 The Parties enter into this Consent Judgment in order to settle disputed claims
4 between them and to avoid prolonged litigation.

5 1.8 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
6 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or
7 violation of law. Nothing in this Consent Judgment shall be construed as giving rise to any
8 presumption or inference of admission or concession or waiver of a defense by Defendants,
9 individually or jointly, as to any fault, wrongdoing or liability whatsoever, including, but not
10 limited to, any alleged violation of Proposition 65.

11 1.9 Except as expressly provided herein, nothing in this Consent Judgment shall
12 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or
13 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,
14 responsibilities, and duties of any Party to this Consent Judgment.

15 1.10 The "Effective Date" of this Consent Judgment shall be the date this Consent
16 Judgment is entered by the Court.

17 1.11 The only product covered by this Consent Judgment is the Covered Product, and
18 the only chemical covered by this Consent Judgment is the chemical lead as specifically related
19 to the Covered Product only.

20 **2. JURISDICTION AND VENUE**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
23 venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment
24 pursuant to the terms set forth herein.

25 **3. INJUNCTIVE RELIEF**

26 **3.1 Reformulation of Covered Product**

27 On and after the Effective Date, Defendants shall be permanently enjoined from
28 manufacturing for sale in California, distributing into California, or directly selling to any

1 consumer located in California any of the Covered Product that contains more than 0.5
2 micrograms of lead per bar, after subtracting out the amount of lead deemed “naturally
3 occurring” for each ingredient listed in Table 3.2 below. The term “distributing into California”
4 means to ship the Covered Product into California for sale in California or to sell or provide the
5 Covered Product to any person or entity Defendants know intends to or will ship the Covered
6 Product into or sell the Covered Product in California.

7 3.2 Calculation of Lead Content

8 For the purposes of Section 3.1 above and only for purposes of this Consent Judgment,
9 the amount of lead deemed “naturally occurring” in the Covered Product is the sum of the
10 amounts of “naturally occurring” lead supplied by the quantity of each ingredient listed in Table
11 3.2 that is present in each bar. For each ingredient, the amount of “naturally occurring” lead is
12 listed in Table 3.2 in micrograms of “naturally occurring” lead per gram of the ingredient
13 contained in each bar of the Covered Product. Defendants shall provide ERC, under the terms of
14 the confidentiality agreement entered into by the Parties, with information on the quantity in
15 grams (rounded to the nearest one tenth of a gram) of each of the ingredients listed in Table 3.2
16 contained in each bar of the Covered Product.

17 **TABLE 3.2**

18

Ingredient	Amount of Lead Per Gram of Ingredient Deemed Naturally Occurring for Purposes of this Consent Judgment Only
Calcium (elemental)	0.8 micrograms
Cocoa Powder	1.0 micrograms

19
20
21

22 3.3 Testing

23 (a) Beginning on the Effective Date and continuing for 24 months after the Effective
24 Date, at least once every three months thereafter, Defendants shall test for lead content a
25 randomly selected sample bar of the Covered Product (in the form intended for sale to the end-
26 user) from the most recently manufactured lot in the possession of the Defendants. Each sample
27 to be tested shall be randomly selected using a sound statistical sampling plan, and shall be
28

1 identified in Defendant's request to the laboratory for testing as being submitted pursuant to this
2 Consent Judgment.

3 (b) Testing for lead content under Section 3.3 shall be performed using closed-vessel,
4 microwave-assisted acid digestion employing high-purity reagents, followed by Inductively
5 Coupled Plasma-Mass Spectrometry (ICP-MS); or heat-assisted acid digestion employing high-
6 purity reagents, followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS); or any
7 other testing method agreed upon in writing by the Parties.

8 (c) Should testing results conducted pursuant to paragraph 3.3(b) indicate that there is
9 more than 0.5 micrograms of lead per bar, after subtracting out the amount of lead deemed
10 "naturally occurring" for each ingredient listed in Table 3.2, Defendants shall randomly select
11 three (3) additional sample bars of the Covered Product from the most recently manufactured lot
12 in the possession of the Defendants and the test results from those three (3) bars shall be
13 averaged together for purposes of determining the amount of lead allowed pursuant to
14 paragraphs 3.1 and 3.2.

15 (d) Defendants shall arrange for copies of all laboratory reports with results of testing
16 for lead content under Section 3.3 to be automatically sent by the testing laboratory directly to
17 ERC within ten working days after completion of that testing. These reports shall be deemed
18 and treated as confidential information.

19 (e) Nothing in this Consent Judgment shall limit Defendants' ability to conduct, or
20 require that others conduct, additional testing of the Covered Product, including the raw
21 materials used in their manufacture.

22 (f) The testing and sampling methodology set forth in Section 3.3 is a result of
23 negotiation and compromise, and is accepted by the Parties for the purposes of settling,
24 compromising, and resolving the issues in this Action, including future compliance with Section
25 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except
26 for the purposes of determining future compliance with this Consent Judgment.

27 **3.4 Products in the Stream of Commerce**

28 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Product

1 that Defendants put into the stream of commerce before the Effective Date. Defendants shall
2 provide ERC with the last lot number and expiration date for the Covered Product in the stream
3 of commerce on the Effective Date.

4 **4. SETTLEMENT PAYMENT**

5 **4.1 Total Payment**

6 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
7 ERC's expenses and costs of litigation, and ERC's attorney fees, Defendants shall, within 10
8 days after the Effective Date, issue a single check in the amount of \$105,000 ("Total Settlement
9 Amount"), made payable to "Environmental Research Center – ERC Escrow Account", and send
10 the check by first-class registered or certified mail, or overnight delivery, directly to ERC at the
11 following address:

12 Environmental Research Center
13 3111 Camino del Rio North, Suite 400
14 San Diego, CA 92108

15 Defendant shall also issue a single IRS Federal Tax Form 1099 for the above payment to ERC.

16 Sections 4.2-4.5 below describe the agreed partition of the Total Settlement Amount.

17 **4.2 Civil Penalty**

18 As a portion of the Total Settlement Amount, \$13,855 shall be considered a civil penalty
19 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75%
20 (\$10,391.25) of the civil penalties to the Office of Environmental Health Hazard Assessment
21 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
22 with California Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be
23 sent to Defendant's counsel. ERC will retain the remaining 25% (\$3,463.75) of the civil penalty.

24 **4.3 Payment in Lieu of Further Civil Penalties**

25 As a portion of the Total Settlement Amount, \$41,565 shall be considered a payment to
26 ERC in lieu of further civil penalties for activities such as (1) funding the investigating,
27 researching and testing of consumer products that may contain Proposition 65 listed chemicals;
28 (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

1 pursuing an education in the field of environmental sciences; (4) funding ERC's Operation
2 Education Program designed to provide funding to educators in the State of California public
3 school system for creative and effective environment and environmental sciences teaching
4 projects; (5) funding ERC's Voluntary Compliance Program to work with companies not subject
5 to Proposition 65 to reformulate their products to reduce potential consumer exposures to
6 Proposition 65 listed chemicals; (6) funding ERC's RxY Program to assist various medical
7 personnel to provide testing assistance to independent distributors of various products;
8 (7) funding ERC's Got Lead? Program to assist consumers in testing products for lead content;
9 (8) funding post-settlement monitoring of past consent judgments; (9) funding to maintain ERC's
10 database of lead-free products, Proposition 65-compliant products and contaminated products;
11 (10) funding to track and catalog Proposition 65-compliant, contamination-free sources of
12 ingredients used in the products ERC tests; and (11) funding the continued day to day business of
13 enforcement of Proposition 65 matters which address contaminated ingestible products, similar
14 to the subject matter of this Action.

15 4.4 Reimbursement of Expenses and Costs

16 As a portion of the Total Settlement Amount, \$22,580 shall be considered a
17 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of
18 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this
19 matter to Defendant's attention, litigating and negotiating a settlement in the public interest.

20 4.5 Attorney Fees

21 As a portion of the Total Settlement Amount, \$27,000 shall be considered a
22 reimbursement to ERC for its attorney fees.

23 5. COSTS AND FEES

24 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
25 fees, costs and expenses in this Action.

26 6. RELEASE

27 6.1 ERC, acting on its own behalf and in the public interest, releases Defendants, and
28 their respective officers, directors, shareholders, employees, agents, representatives, parents,

1 subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and
2 attorneys, and suppliers, manufacturers, distributors, wholesalers, retailers and all other entities
3 in the distribution chain of the Covered Product (“Released Parties”), from all claims for
4 violations of Proposition 65 up through the Effective Date based on exposure to lead from the
5 Covered Product as set forth in the Notice of Violations and the Complaint.

6 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
7 Proposition 65 with respect to exposures to lead from the Covered Product as set forth in the
8 Notice of Violations.

9 6.3 ERC on behalf of itself only, on the one hand, and Defendant, on the other hand,
10 release and waive all claims they may have against each other and their respective officers,
11 directors, employees, agents, representatives and attorneys for any statements or actions made or
12 undertaken by them or their respective officers, directors, employees, agents, representatives and
13 attorneys in connection with the Notice of Violations or this Action.

14 6.4 Nothing in this release is intended to apply to any occupational or environmental
15 exposures arising under Proposition 65, nor shall it apply to any of Defendants’ products other
16 than the Covered Product.

17 **7. MOTION FOR COURT APPROVAL**

18 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
19 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
20 Code of Regulations § 3000, *et seq.* This motion shall be served upon all Defendants and upon
21 the California Attorney General’s Office. Defendants and ERC shall use their best efforts to
22 support entry of this Consent Judgment in the form submitted to the Court for approval.

23 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
24 California Attorney General objects in writing to any term in this Consent Judgment or files an
25 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
26 manner prior to the hearing on the motion. If the concern of the California Attorney General is
27 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
28 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph

1 17 below and notice to the California Attorney General's Office, and upon such notice this
2 Consent Judgment shall be null and void.

3 7.3 This Consent Judgment shall be effective only after it has been entered by the
4 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
5 any purpose.

6 **8. RETENTION OF JURISDICTION**

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

9 **9. MODIFICATION OF CONSENT JUDGMENT**

10 9.1 This Consent Judgment after its entry by the Court may be modified only upon
11 written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
12 thereon, or upon a regularly noticed motion of any Party to modify the Consent Judgment and
13 upon entry of a modified Consent Judgment by the Court.

14 9.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with all affected Parties prior to filing a motion to modify the Consent
16 Judgment.

17 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO
18 RESOLVE DISPUTES**

19 In the event a dispute arises with respect to any Party's compliance with the terms and/or
20 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of
21 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
22 Party in person, by telephone or by correspondence before seeking relief from the Court. If the
23 dispute is not resolved after such an attempt, this Consent Judgment may be enforced in this
24 Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law. The
25 prevailing party in any such dispute brought to this Court for resolution shall be awarded all
26 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing
27 party" means a party who is successful in obtaining relief more favorable to it than the relief the
28 other party was agreeable to providing during the Parties' good faith attempt to resolve the

1 dispute that is the subject of such an enforcement proceeding.

2 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

3 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
4 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable
5 provisions shall not be adversely affected.

6 **12. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California.

9 **13. RELATION TO OTHER ACTIONS**

10 13.1 Nothing in this Consent Judgment shall waive, impair or prejudice any right,
11 remedy or defense that Released Parties, individually or jointly, may have based on prior or
12 future judgments, settlements or legal proceedings, including, but not limited to, the Consent
13 Judgment entered in *Edgerton v. Conopco, Inc., et al.*, California Superior Court, Los Angeles,
14 Case No. BC262906. This paragraph shall not diminish or otherwise affect the obligations,
15 responsibilities, and duties of Defendants to this Consent Judgment.

16 13.2 This Consent Judgment shall have no application or effect on Defendants for the
17 Covered Product or other products distributed or sold by Defendants to consumers outside the
18 State of California.

19 **14. DRAFTING**

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

28 ///

1 **15. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all
4 prior agreements or understandings, written or oral, with regard to the matters set forth herein.
5 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall
6 be deemed to exist or to bind any of the Parties.

7 **16. EXECUTION IN COUNTERPARTS**

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

11 **17. NOTICES**

12 All notices required by this Consent Judgment to be given to any Party shall be sent by
13 first-class registered or certified mail, or overnight delivery, to the following:

14 **FOR ERC:**

15 Chris Heptinstall, Executive Director
16 Environmental Research Center
17 3111 Camino del Rio North, Suite 400
San Diego, CA 92108

18 Philip T. Emmons
19 Law Office of Philip T. Emmons
20 1990 North California Blvd., 8th Floor
Walnut Creek, CA 94596-3742

21 Karen A. Evans
22 Law Office of Karen A. Evans
23 4218 Biona Place
San Diego, CA 92116

24 **FOR DEFENDANTS:**

25 Atkins Nutritionals, Inc.
26 Attn: General Counsel
27 1050 17th Street, Suite 1000
Denver, CO 80265

1 North Castle Partners, L.L.C.

2 Attn: Louis Marinaccio

3 183 East Putnam Avenue

4 Greenwich, CT 06830

5 Carolyn Collins

6 Nixon Peabody LLP

7 One Embarcadero Center, Suite 1800

8 San Francisco, CA 94111

9 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

10 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is
11 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment
12 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,
13 and to legally bind that Party to this Consent Judgment. Each person signing this Consent
14 Judgment on behalf of a Party represents and warrants that he or she has read and understands
15 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
16 behalf of that Party.

17 **IT IS SO STIPULATED:**

18 Dated: 8/6/2012

ENVIRONMENTAL RESEARCH CENTER

19 By: 
20 Chris Hopfinstall
21 Executive Director

22 Dated: _____

ATKINS NUTRITIONALS, INC.

23 By: _____
24 Name:
25 Title:

26 Dated: _____

NORTH CASTLE PARTNERS, L.L.C.

27 By: _____
28 Name:
Title:

1 North Castle Partners, L.L.C.
2 Attn: Louis Marinaccio
3 183 East Putnam Avenue
4 Greenwich, CT 06830

5 Carolyn Collins
6 Nixon Peabody LLP
7 One Embarcadero Center, Suite 1800
8 San Francisco, CA 94111

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14 Judgment on behalf of a Party represents and warrants that he or she has read and understands
15 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
16 behalf of that Party.

17 **IT IS SO STIPULATED:**

18 Dated: _____

ENVIRONMENTAL RESEARCH CENTER

19 By: _____

Chris Heptinstall
Executive Director

20 Dated: July 31, 2012
21 *(see 1)*

ATKINS NUTRITIONALS, INC.

22 By: *Earle D. Bellamy*

23 Name: *Earle D. Bellamy*
24 Title: *Vice President -*
General Counsel

25 Dated: _____

NORTH CASTLE PARTNERS, L.L.C.

26 By: _____

27 Name:

28 Title:

1 North Castle Partners, L.L.C.
2 Attn: Louis Marinaccio
3 183 East Putnam Avenue
4 Greenwich, CT 06830

5 Carolyn Collins
6 Nixon Peabody LLP
7 One Embarcadero Center, Suite 1800
8 San Francisco, CA 94111

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14 Judgment on behalf of a Party represents and warrants that he or she has read and understands
15 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
16 behalf of that Party.

17 **IT IS SO STIPULATED:**

18 Dated: _____

ENVIRONMENTAL RESEARCH CENTER

19 By: _____

20 Chris Heptinstall
21 Executive Director

22 Dated: _____

ATKINS NUTRITIONALS, INC.

23 By: _____

24 Name:
25 Title:

26 Dated: 7/30/12

NORTH CASTLE PARTNERS, L.L.C.

27 By:  _____

28 Name: Louis Marinaccio
Title: Managing Director

1 APPROVED AS TO FORM:

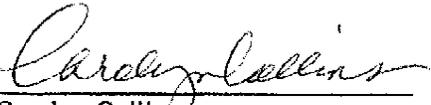
2
3 Dated: 8/6/12

LAW OFFICE OF PHILIP T. EMMONS

4
5 By: 
6 Philip T. Emmons
7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER

8 Dated: 2 August 2012

NIXON PEABODY LLP

9
10 By: 
11 Carolyn Collins
12 Attorney for Defendants
13 ATKINS NUTRITIONALS, INC. and
14 NORTH CASTLE PARTNERS, L.L.C.

15 **ORDER AND JUDGMENT**

16 Based on the Parties' stipulation, and good cause appearing therefor, this Consent
17 Judgment is approved and judgment is hereby entered according to its terms.
18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19
20 Dated: NOV 08 2012

21 **MARLA J. MILLER**
22 Judge of the Superior Court

23
24
25 EXHIBIT A - [Notice of Violations to Defendants]
26
27
28

EXHIBIT A

LAW OFFICE OF
PHILIP T. EMMONS
208 Normandy Lane
Walnut Creek, CA 94598
Tel: (925) 349-4029
E-Mail: p-emmons@hotmail.com

September 24, 2010

VIA CERTIFIED MAIL

Current CEO or President
North Castle Partners, LLC
183 E Putnam Ave
Greenwich, CT 06830

The Corporation Trust Company
(North Castle Partners, LLC's Registered
Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

CT Corporation System
(North Castle Partners, LLC's Registered
Agent for Service of Process)
818 W. 7th St.
Los Angeles, CA 90017

Current CEO or President
Atkins Nutritionals Holdings, Inc.
1050 17th St Ste 1000
Denver, CO 80265

National Corporate Research Ltd.
(As Registered Agent for Atkins Nutritionals
Holdings, Inc.)
10 E. 40th Street, 10th Floor
New York, NY 10016

Current CEO or President
Atkins Nutritionals, Inc.
1050 17th St Ste 1000
Denver, CO 80265

The Corporation Company
(Atkins Nutritionals, Inc.'s Registered Agent
for Service of Process)
1675 Broadway, Suite 1200
Denver, CO 80202

VIA PRIORITY MAIL

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

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

September 24, 2010

Page 2

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

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

Dear Addressees:

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

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

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter “the Violators”) are:

North Castle Partners, LLC
Atkins Nutritionals Holdings, Inc.
Atkins Nutritionals, Inc.

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

Atkins Nutritionals Inc. Day Break Peanut Butter Fudge Crisp Bar - Lead

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

This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators 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 each of the Violators.

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product’s label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemicals.

September 24, 2010

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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 each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and 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 chemicals and expensive and time consuming litigation. ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194. However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Philip T. Emmons, Esq.

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to North Castle Partners, LLC, Atkins Nutritionals Holdings, Inc., Atkins Nutritionals, Inc., and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by North Castle Partners, LLC, Atkins Nutritionals Holdings, Inc., and Atkins Nutritionals, Inc.

I, Philip T. Emmons, 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: September 24, 2010

Philip T. Emmons

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President
North Castle Partners, LLC
183 E Putnam Ave
Greenwich, CT 06830

Current CEO or President
Atkins Nutritionals Holdings, Inc.
1050 17th St Ste 1000
Denver, CO 80265

The Corporation Trust Company
(North Castle Partners, LLC's Registered
Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

National Corporate Research Ltd.
(Atkins Nutritionals Holdings, Inc.'s
Registered Agent for Service of Process)
10 E. 40th Street, 10th Floor
New York, NY 10016

CT Corporation System
(North Castle Partners, LLC's Registered
Agent for Service of Process)
818 W. 7th St.
Los Angeles, CA 90017

Current CEO or President
Atkins Nutritionals, Inc.
1050 17th St Ste 1000
Denver, CO 80265

The Corporation Company
(Atkins Nutritionals, Inc.'s Registered Agent
for Service of Process)
1675 Broadway, Suite 1200
Denver, CO 80202

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

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

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

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On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 24, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

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

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

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

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

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

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

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

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

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

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