

ENDORSED
FILED
ALAMEDA COUNTY

JUN 10 2015

K. McCoy, Exec. Off./Clerk

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22 PROGRESSIVE LABORATORIES, INC.

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 COUNTY OF ALAMEDA

25 ENVIRONMENTAL RESEARCH
26 CENTER, INC. a non-profit California
27 corporation,

28 Plaintiff,

29 vs.

30 PROGRESSIVE LABORATORIES, INC. a
31 Texas corporation,

32 Defendant.

CASE NO. RG14729617

STIPULATED CONSENT JUDGMENT;
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: June 18, 2014

Trial Date: None set

1 **1. INTRODUCTION**

2 1.1 On June 18, 2014, Plaintiff Environmental Research Center (“ERC”), a non-
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing
4 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
5 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
6 (“Proposition 65”), against PROGRESSIVE LABORATORIES, INC. (“Progressive”). In this
7 action, ERC alleges that a number of products manufactured, distributed or sold by Progressive
8 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
9 expose consumers to this chemical at a level requiring a Proposition 65 warning. These
10 products (referred to hereinafter individually as a “Covered Product” or collectively as
11 “Covered Products”) are:

- 12 (1) Progressive Laboratories Inc. Legs On Edge
- 13 (2) Progressive Laboratories Inc. Prosta Glan
- 14 (3) Progressive Laboratories Inc. Aller-7
- 15 (4) Progressive Laboratories Inc. Cardio Flow
- 16 (5) Progressive Laboratories Inc. Colon Cleanse
- 17 (6) Progressive Laboratories Inc. One Step
- 18 (7) Progressive Laboratories Inc. Skip-A-Meal Vanilla Shake
- 19 (8) Attogram Corp. Psyllium Powder
- 20 (9) Progressive Laboratories Inc. Ginger Herb Complex
- 21 (10) Progressive Laboratories Inc. Herbal Harmony
- 22 (11) Progressive Laboratories Inc. Daily Greens
- 23 (12) Progressive Laboratories Inc. One Step Chocolate Flavor
- 24 (13) Attogram Corp. Bentonite Magma
- 25 (14) Progressive Laboratories Inc. Cardio Clear
- 26 (15) Progressive Laboratories Inc. Brilliant Vision with Seanol-P
- 27 (16) Progressive Laboratories Inc. Poligugul Complex

1 (17) Progressive Laboratories Inc. One Step Strawberry Flavor

2 (18) Progressive Laboratories Inc. One Step Vanilla Flavor

3 (19) Progressive Laboratories Inc. Skip-A-Meal Chocolate Shake

4 (20) Progressive Laboratories Inc. Skip-A-Meal Strawberry Shake

5 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
6 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
7 and toxic chemicals, facilitating a safe environment for consumers and employees, and
8 encouraging corporate responsibility.

9 1.3 For purposes of this Consent Judgment, the parties agree that Progressive is a
10 business entity that has employed ten or more persons at all times relevant to this action, and
11 qualify as a "person in the course of business" within the meaning of Proposition 65. Progressive
12 manufactures, distributes and sells the Covered Products.

13 1.4 ERC and Progressive are referred to individually as a "Party" or collectively as
14 the "Parties."

15 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
16 dated April 4, 2014, that was served on the California Attorney General, other public enforcers,
17 and Progressive ("Notice"). A true and correct copy of the Notice is attached as Exhibit A and
18 is hereby incorporated by reference. More than 60 days have passed since the Notice was
19 mailed and uploaded to the Attorney General's website, and no designated governmental entity
20 has filed a complaint against Progressive with regard to the Covered Products or the alleged
21 violations.

22 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
23 persons in California to lead without first providing clear and reasonable warnings in violation
24 of California Health and Safety Code section 25249.6. Progressive denies all material
25 allegations contained in the Notice and Complaint.

26 1.7 The Parties have entered into this Consent Judgment in order to settle,
27 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
2 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
3 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
4 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
5 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
6 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
7 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
8 purpose.

9 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
11 other or future legal proceeding unrelated to these proceedings.

12 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
13 a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

15 For purposes of this Consent Judgment and any further court action that may become
16 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
17 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
18 over Progressive as to the acts alleged in the Complaint, that venue is proper in Alameda County,
19 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
20 all claims up through and including the Effective Date which were or could have been asserted in
21 this action based on the facts alleged in the Notice and Complaint.

22 **3. INJUNCTIVE RELIEF, REFORMULATION AND WARNINGS**

23 **3.1** Beginning on the Effective Date, Progressive shall be permanently enjoined
24 from manufacturing for sale in the State of California, "Distributing into the State of
25 California", or directly selling in the State of California, any Covered Product which exposes a
26 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day when the
27
28

1 maximum suggested dose is taken as directed on the Covered Product's label, unless it meets
2 the warning requirements under Section 3.3.

3 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
4 of California" shall mean to directly ship a Covered Product into California for sale in
5 California or to sell a Covered Product to a distributor that Progressive knows will sell the
6 Covered Product in California.

7 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
8 Level" shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of lead per gram of product, multiplied by grams of product per serving of the
10 product (using the largest serving size appearing on the product label), multiplied by servings
11 of the product per day (using the largest number of servings in a recommended dosage
12 appearing on the product label), which equals micrograms of lead exposure per day.

13 **3.2 Voluntary Cessation of Certain Covered Products**

14 By the Effective Date, Progressive shall cease all sales of the following "Certain Covered
15 Products" in California: Progressive Laboratories Inc. One Step, Progressive Laboratories Inc.
16 One Step Chocolate Flavor, Progressive Laboratories Inc. One Step Strawberry Flavor,
17 Progressive Laboratories Inc. One Step Vanilla Flavor, and Attogram Corp. Bentonite Magma.

18 By the Effective Date, Progressive will voluntarily cease all sales of the Certain Covered
19 Products outside of California.

20 To the extent that Progressive is able to reformulate any of the "Certain Covered
21 Products" to a level of lead that exposes a person to a "Daily Lead Exposure Level" of less than
22 15 micrograms per day when the maximum suggested dose is taken as directed on the Certain
23 Covered Product's label, Progressive may continue to sell the "Certain Covered Product" in a
24 manner consistent with Paragraph 3.1.

25 **3.3 Clear and Reasonable Warnings**

26 **3.3.1** If Progressive is required to provide a warning pursuant to Section 3.1, the
27 following warning must be utilized:

1 **WARNING: This product contains [a] chemical[s] known to the State of California to**
2 **cause [cancer and] birth defects or other reproductive harm.**

3 Progressive shall use the phrase "cancer and" in the warning only if the maximum daily dose
4 recommended on the label contains more than 15 micrograms of lead.

5 The warning shall be at least the same size as the largest of any other health or safety
6 warnings also appearing on its website and the word "**WARNING**" shall be in all capital letters
7 and in bold print. No other statements about Proposition 65 or lead may accompany the warning.

8 Progressive shall provide the warning on Progressive's checkout page on its website when
9 a California shipping address is provided. All Covered Products for which the warning applies
10 shall be identified on the webpage in the same vicinity as the warning.

11 **3.3.2** If Progressive is required to provide a warning pursuant to Section 3.1, Progressive
12 shall include on the shipping invoice the Proposition 65 warning set forth above in Section 3.3.1.

13 **3.3.3** Progressive shall send a letter from Progressive to each current distributor, retailer,
14 and California medical professional supplying Covered Products that require a warning as set forth
15 above, with a signature acknowledgement block, apprising the distributor, retailer, and California
16 medical professional of how they must comply with Proposition 65 for the Covered Products.
17 Progressive will provide ERC with a copy of the original letter and signed letters upon ERC's
18 written request within 30 days of such request (copies of the letter and follow-up letter are attached
19 as Exhibits B and C, respectively.)

20 **3.4 Reformulated Covered Products**

21 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
22 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
23 contains no more than 0.5 micrograms of lead per day as determined by the quality control
24 methodology described in Section 3.4.

25 **4. SETTLEMENT PAYMENT**

26 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
27 penalties, attorney's fees, and costs, Progressive shall make a total payment of \$90,000.00

1 ("Total Settlement Amount") to ERC by the later of July 1, 2015 or 10 days after the Notice of
2 Entry of the Consent Judgment. Progressive shall make this payment by wire transfer to ERC's
3 escrow account, for which ERC will give Progressive the necessary account information. The
4 Total Settlement Amount shall be apportioned as follows:

5 **4.2** \$18,200.00 shall be considered a civil penalty pursuant to California Health and
6 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$13,650.00) of the civil penalty to the
7 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
9 Code §25249.12(c). ERC will retain the remaining 25% (\$4,550.00) of the civil penalty.

10 **4.3** \$4,791.76 shall be distributed to Environmental Research Center as
11 reimbursement to ERC for reasonable costs incurred in bringing this action.

12 **4.4** \$38,969.28 shall be distributed to Lozeau Drury LLP as reimbursement of
13 ERC's attorney's fees, while \$28,038.96 shall be distributed to ERC for its in-house legal fees.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
16 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
17 judgment.

18 **5.2** If Progressive seeks to modify this Consent Judgment under Section 5.1, then
19 Progressive must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
20 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
21 provide written notice to Progressive within thirty days of receiving the Notice of Intent. If
22 ERC notifies Progressive in a timely manner of ERC's intent to meet and confer, then the
23 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
24 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
25 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
26 ERC shall provide to Progressive a written basis for its position. The Parties shall continue to
27 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.

1 Should it become necessary, the Parties may agree in writing to different deadlines for the
2 meet-and-confer period.

3 **5.3** In the event that Progressive initiates or otherwise requests a modification under
4 Section 5.1, and the meet and confer process leads to a joint motion or application of the
5 Consent Judgment, Progressive shall reimburse ERC its costs and reasonable attorney's fees
6 for the time spent in the meet-and-confer process and filing and arguing the motion or
7 application.

8 **5.4** Where the meet-and-confer process does not lead to a joint motion or
9 application in support of a modification of the Consent Judgment, then either Party may seek
10 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
11 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
12 means a party who is successful in obtaining relief more favorable to it than the relief that the
13 other party was amenable to providing during the Parties' good faith attempt to resolve the
14 dispute that is the subject of the modification.

15 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
16 **JUDGMENT**

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
18 this Consent Judgment.

19 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
20 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
21 inform Progressive in a reasonably prompt manner of its test results, including information
22 sufficient to permit Progressive to identify the Covered Products at issue. Progressive shall,
23 within thirty (30) days following such notice, provide ERC with information demonstrating
24 Progressive's compliance with the Consent Judgment, if warranted. The Parties shall first
25 attempt to resolve the matter prior to ERC taking any further legal action.

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
28

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
2 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
3 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
4 application to Covered Products which are distributed or sold exclusively outside the State of
5 California and which are not used by California consumers.

6 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

7 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
8 behalf of itself and in the public interest, and Progressive, of any alleged violation of
9 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
10 exposure to lead from the handling, use, or consumption of the Covered Products and fully
11 resolves all claims that have been or could have been asserted in this action up to and including
12 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.
13 ERC, on behalf of itself and in the public interest, hereby discharges Progressive and its
14 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
15 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label
16 customers of Progressive), from any and all claims, actions, causes of action, suits, demands,
17 liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been
18 asserted, as to any alleged violation of Proposition 65 arising from the failure to provide
19 Proposition 65 warnings on the Covered Products regarding lead.

20 **8.2** ERC on its own behalf only, on one hand, and Progressive on its own behalf
21 only, on the other, further waive and release any and all claims they may have against each
22 other for all actions or statements made or undertaken in the course of seeking or opposing
23 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
24 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
25 any Party's right to seek to enforce the terms of this Consent Judgment.

26 **8.3** It is possible that other claims not known to the Parties arising out of the facts
27 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be

1 discovered. ERC on behalf of itself only acknowledges that this Consent Judgment is expressly
2 intended to cover and include all such claims up through the Effective Date, including all rights
3 of action therefore. ERC acknowledges that the claims released in Sections 8.1 and 8.2 above
4 may include unknown claims, and nevertheless waives California Civil Code section 1542 as to
5 any such unknown claims. California Civil Code section 1542 reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
9 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
10 OR HER SETTLEMENT WITH THE DEBTOR.

9 ERC on behalf of itself only, acknowledges and understands the significance and consequences
10 of this specific waiver of California Civil Code section 1542.

11 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
13 in the Covered Products as set forth in the Notice and the Complaint.

14 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of Progressive's
16 products other than the Covered Products.

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

18 In the event that any of the provisions of this Consent Judgment are held by a court to be
19 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

20 **10. GOVERNING LAW**

21 The terms and conditions of this Consent Judgment shall be governed by and construed in
22 accordance with the laws of the State of California.

23 **11. PROVISION OF NOTICE**

24 All notices required to be given to either Party to this Consent Judgment by the other shall
25 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified
26 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

27 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

28 Chris Heptinstall, Executive Director, Environmental Research Center

1 3111 Camino Del Rio North, Suite 400
2 San Diego, CA 92108
3 Tel: (619) 500-3090
4 Email: chris_erc501c3@yahoo.com

5 With a copy to:

6 Douglas Chermak
7 Lozeau Drury LLP
8 410 12th Street, Suite 250
9 Oakland, CA 94607
10 Tel: (510) 821-3474
11 Email: doug@lozeaudrury.com

12 **PROGRESSIVE LABORATORIES, INC.**

13 Larry Thompson
14 3131 Story Road West
15 Irving, Texas 75038
16 972-518-9660
17 larrythompson@progressivelabs.com

18 With a copy to:

19 Margaret Carew Toledo
20 Stacy E. Don
21 Toledo Don LLP
22 3001 Douglas Blvd., Suite 340
23 Roseville, CA 95661-3853
24 Telephone: (916) 462-8950
25 Facsimile: (916) 791-0175
26 Email: Toledo@toledodon.com

27 **12. COURT APPROVAL**

28 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
29 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
30 Consent Judgment.

31 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
32 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
33 prior to the hearing on the motion.

1 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

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

7 **14. DRAFTING**

8 The terms of this Consent Judgment have been reviewed by the respective counsel for each
9 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with
10 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent
11 Judgment entered thereon, the terms and provisions shall not be construed against any Party.

12 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

13 If a dispute arises with respect to either Party's compliance with the terms of this Consent
14 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
15 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
16 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
17 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
18 used in the preceding sentence, the term "prevailing party" means a party who is successful in
19 obtaining relief more favorable to it than the relief that the other party was amenable to providing
20 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
21 action.

22 **16. ENTIRE AGREEMENT, AUTHORIZATION**

23 16.1 This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter herein, and any and all
25 prior discussions, negotiations, commitments and understandings related hereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein have
27

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
5 explicitly provided herein, each Party shall bear its own fees and costs.

6 17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
7 CONSENT JUDGMENT


8 This Consent Judgment has come before the Court upon the request of the Parties. The
9 Parties request the Court to fully review this Consent Judgment and, being fully informed
10 regarding the matters which are the subject of this action, to:

11 (1) Make the findings pursuant to California Health and Safety Code section
12 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

13 IT IS SO STIPULATED:

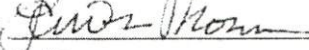
14 Dated: 3/10/, 2015

ENVIRONMENTAL RESEARCH
CENTER

15 By: 
16 Its: EXECUTIVE DIRECTOR

17
18 Dated: MARCH 9, 2015

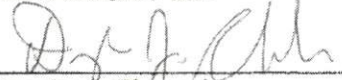
PROGRESSIVE LABORATORIES, INC.

19 By: 
20 Its: PRESIDENT

21
22 APPROVED AS TO FORM:

23 Dated: 10 March, 2015

LOZEAU DRURY LLP

24 By: 
25 Douglas J. Chermak
26 Attorneys for Plaintiff, Environmental
27 Research Center
28

1 Dated: March 9, 2015

TOLEDO DON LLP

2 By: Margaret Carew Toledo
3 Margaret Carew Toledo
4 Stacy E. Don
5 Attorneys for Defendant Progressive
6 Laboratories, Inc.

7 **ORDER AND JUDGMENT**

8 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
9 approved and Judgment is hereby entered according to its terms.

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11 Dated: June 10, 2015

12 Wynne Carvill
13 Judge of the Superior Court

EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Progressive Laboratories, Inc.
1701 W Walnut Hill Lane
Irving, TX 75038

Joseph Oneal
(Progressive Laboratories, Inc.'s
Registered Agent for Service of Process)
1701 W Walnut Hill Lane
Irving, TX 75038

VIA PRIORITY MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

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 name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Progressive Laboratories, Inc.

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

1. **Progressive Laboratories Inc. Legs On Edge - Lead**
2. **Progressive Laboratories Inc. Prosta Glan - Lead**
3. **Progressive Laboratories Inc. Aller-7 - Lead**
4. **Progressive Laboratories Inc. Cardio Flow - Lead**
5. **Progressive Laboratories Inc. Colon Cleanse - Lead**
6. **Progressive Laboratories Inc. One Step - Lead**
7. **Progressive Laboratories Inc. Skip-A-Meal Vanilla Shake - Lead**
8. **Attogram Corp. Psyllium Powder - Lead**
9. **Progressive Laboratories Inc. Ginger Herb Complex - Lead**
10. **Progressive Laboratories Inc. Herbal Harmony - Lead**
11. **Progressive Laboratories Inc. Daily Greens - Lead**
12. **Progressive Laboratories Inc. One Step Chocolate Flavor - Lead**
13. **Attogram Corp. Bentonite Magma - Lead**
14. **Progressive Laboratories Inc. Cardio Clear - Lead**
15. **Progressive Laboratories Inc. Brilliant Vision with Seanol-P - Lead**
16. **Progressive Laboratories Inc. Poligugul Complex - Lead**
17. **Progressive Laboratories Inc. One Step Strawberry Flavor - Lead**
18. **Progressive Laboratories Inc. One Step Vanilla Flavor - Lead**
19. **Progressive Laboratories Inc. Skip-A-Meal Chocolate Shake - Lead**
20. **Progressive Laboratories Inc. Skip-A-Meal Strawberry Shake - 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.

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 purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead 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 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 using and/or handling these products that they are being

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

April 4, 2014

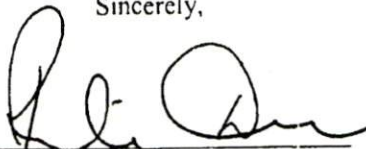
Page 3

exposed to lead. Each of these ongoing violations has occurred on every day since April 4, 2011, 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 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 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,



Richard Drury

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Progressive Laboratories, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

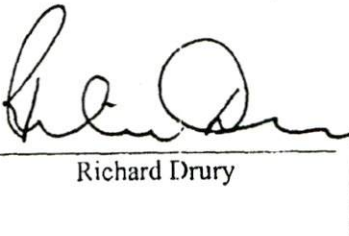
CERTIFICATE OF MERIT

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

I, Richard Drury, 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: April 4, 2014


Richard Drury

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 April 4, 2014, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Progressive Laboratories, Inc.
1701 W Walnut Hill Lane
Irving, TX 75038

Joseph Oneal
(Progressive Laboratories, Inc.'s Registered Agent
for Service of Process)
1701 W Walnut Hill Lane
Irving, TX 75038

On April 4, 2014, I electronically served 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)** 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 April 4, 2014, 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 Priority Mail.

Executed on April 4, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

April 4, 2014

Page 6

Service List

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

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

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

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

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

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

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

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

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

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

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

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 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, Suite 18000
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center Drive, 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
550 W. Main 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
Post Office Box 1131
Salinas, CA 93902

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

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

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

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
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

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, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, 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
1112 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
1355 West Street
Redding, CA 96001

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 95354

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 Blvd., Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

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

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

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

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

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

EXHIBIT B

Exhibit B

Date

[Addressee]

THIS COMMUNICATION APPLIES ONLY TO SALES TO CALIFORNIA RESIDENTS.

Progressive Laboratories has entered into a Consent Judgment with Environmental Research Center, Inc. (ERC) for the State of California regarding the presence of lead in specified dietary supplements sold in California.

Under the terms of this Consent Judgment, Progressive is providing the enclosed warning stickers to you so that they can be affixed to any of the specified dietary supplements identified below:

- Progressive Laboratories Inc. Legs On Edge
- Progressive Laboratories Inc. Prosta Glan
- Progressive Laboratories Inc. Aller-7
- Progressive Laboratories Inc. Cardio Flow
- Progressive Laboratories Inc. Colon Cleanse
- Progressive Laboratories Inc. Skip-A-Meal Vanilla Shake
- Attogram Corp. Psyllium Powder
- Progressive Laboratories Inc. Ginger Herb Complex
- Progressive Laboratories Inc. Herbal Harmony
- Progressive Laboratories Inc. Daily Greens
- Progressive Laboratories Inc. Cardio Clear
- Progressive Laboratories Inc. Brilliant Vision with Seanol-P
- Progressive Laboratories Inc. Poligugul Complex
- Progressive Laboratories Inc. Skip-A-Meal Chocolate Shake
- Progressive Laboratories Inc. Skip-A-Meal Strawberry Shake

If you are a retailer, we require that you affix the warning stickers where the identified products are sold to California consumers. If you are a distributor, we require that you provide these warning stickers to whom you distribute the identified products and instruct them to affix the warning stickers when the identified products are sold to California customers.

Please sign and return the written acknowledgement below within 30 days of receiving this letter to acknowledge that you have received the warnings and that you will use them in accordance with these specifications until you receive written instruction from us to the contrary.

Thank you for your cooperation. If you have any questions, please contact:

Dr. Dennis Sparkman, 1-972-518-9660

Acknowledged by:

Signature: _____

Print Name: _____

Company: _____

Date: _____

EXHIBIT C

Exhibit C

Date

[Addressee]

THIS COMMUNICATION APPLIES ONLY TO SALES TO CALIFORNIA RESIDENTS.

On _____, Progressive Laboratories sent you a letter enclosing sticker warnings to affix to Progressive products to which you distribute its dietary supplements, pursuant to a Consent Judgment entered into between Progressive and Environmental Research Center, Inc. (ERC) regarding the presence of lead in specified dietary supplements sold in California.

Warning stickers are to be affixed to any of the specified dietary supplements identified below that are sold in your stores in California or in stores in California to which you distribute these supplements. The stickers may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers.

- Progressive Laboratories Inc. Legs On Edge
- Progressive Laboratories Inc. Prosta Glan
- Progressive Laboratories Inc. Aller-7
- Progressive Laboratories Inc. Cardio Flow
- Progressive Laboratories Inc. Colon Cleanse
- Progressive Laboratories Inc. Skip-A-Meal Vanilla Shake
- Attogram Corp. Psyllium Powder
- Progressive Laboratories Inc. Ginger Herb Complex
- Progressive Laboratories Inc. Herbal Harmony
- Progressive Laboratories Inc. Daily Greens
- Progressive Laboratories Inc. Cardio Clear
- Progressive Laboratories Inc. Brilliant Vision with Seanol-P
- Progressive Laboratories Inc. Poligugul Complex
- Progressive Laboratories Inc. Skip-A-Meal Chocolate Shake
- Progressive Laboratories Inc. Skip-A-Meal Strawberry Shake

We have not received your written acknowledgement that you have received the stickers and that your stores will affix them to the products, or if you are a distributor, that you will provide the stickers and instructions to California retailers to whom you distribute the identified products. Please sign and return the written acknowledgement below as soon as possible to acknowledge that you have received the stickers and that they will be used or provided in accordance with these specifications until you receive written instructions from Progressive to the contrary.

Thank you for your cooperation. If you need more stickers or have any questions, such as the appropriate warning locations on the products, please contact:

Dr. Dennis Sparkman, 1-972-518-9660

Acknowledged by:

Signature: _____

Print Name: _____

Company: _____

Date: _____