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18 Attorneys for Defendant
19 NUTRIVO, LLC, individually and doing business
20 as RIVALUS and RIVALUS, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 ENVIRONMENTAL RESEARCH
24 CENTER, INC. a non-profit California
25 corporation,

26 Plaintiff,

27 v.

28 NUTRIVO, LLC, individually and doing
business as RIVALUS and RIVALUS, INC.
and DOES 1-25, Inclusive,

Defendants.

CASE NO. RG15771826

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 27, 2015

Trial Date: None set

FILED
ALAMEDA COUNTY

OCT 25 2016

CLERK OF THE SUPERIOR COURT

By Jestrada Deputy

1 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
2 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
3 against NUTRIVO, LLC, individually and doing business as RIVALUS and RIVALUS, INC.
4 and DOES 1-25, Inclusive (collectively "RIVALUS"). In this action, ERC alleges that a
5 number of products manufactured, distributed or sold by RIVALUS contain lead or cadmium,
6 chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and expose
7 consumers to these chemicals at levels requiring a Proposition 65 warning. These products
8 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered
9 Products") are:

10 1) Rivalus Inc. The AP Kit - Lead

11 ***** (kit contains the below products)*

12 a. Rivalus Inc. The AP Kit Alert Clinical Strength

13 b. Rivalus Inc. The AP Kit Pulse Clinical Strength

14 2) Rivalus Inc. (A Nutrivo Company) Enpulse - Lead

15 3) Rivalus Inc. (A Nutrivo Company) Shortcutz - Lead

16 4) Rivalus (A Nutrivo Company) Last Meal Smooth Vanilla - Lead

17 5) Rivalus (A Nutrivo Company) Clean Gainer Chocolate Fudge - Cadmium

18 1.2 ERC and RIVALUS are hereinafter referred to individually as a "Party" or
19 collectively as the "Parties."

20 1.3 ERC is a California non-profit corporation dedicated to, among other causes,
21 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
22 and toxic chemicals, facilitating a safe environment for consumers and employees, and
23 encouraging corporate responsibility.

24 1.4 Solely for purposes of this Consent Judgment, the Parties agree that RIVALUS is a
25 business entity that qualifies as a "person in the course of business" within the meaning of
26 Proposition 65. RIVALUS manufactures, distributes and sells the Covered Products.

27 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation

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1 dated February 13, 2015, that was served on the California Attorney General, other public
2 enforcers, and RIVALUS ("Notice"). A true and correct copy of the Notice is attached as
3 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
4 Notice was mailed and uploaded to the Attorney General's website, and no designated
5 governmental entity has filed a complaint against RIVALUS with regard to the Covered
6 Products or the alleged violations.

7 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
8 persons in California to lead or cadmium without first providing clear and reasonable warnings
9 in violation of California Health and Safety Code section 25249.6. RIVALUS denies all
10 material allegations contained in the Notice and Complaint.

11 1.7 The Parties enter into this Consent Judgment in order to settle, compromise and
12 resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
13 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of
14 their respective officers, directors, shareholders, members, employees, agents, parent
15 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
16 distributors, wholesalers, or retailers. Nothing in this Consent Judgment shall be construed as
17 an admission by the Parties of any fact, issue of law, or violation of law, nor shall compliance
18 with this Consent Judgment be construed as an admission by the Parties of any fact, issue of
19 law, or violation of law, at any time, for any purpose.

20 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
21 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
22 other or future legal proceeding unrelated to these proceedings.

23 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
24 a Judgment by this Court.

25 2. JURISDICTION AND VENUE

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

6 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

7 **3.1** Beginning on the Effective Date, RIVALUS shall be permanently enjoined from
8 manufacturing for sale in the State of California, "Distributing into the State of California", or
9 directly selling in the State of California, any Covered Product which exposes a person to a
10 "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead or "Daily Cadmium
11 Exposure Level" of more than 4.10 micrograms of cadmium per day when the maximum
12 suggested dose is taken as directed on the Covered Product's label, unless it meets the warning
13 requirements under Section 3.2.

14 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
15 of California" shall mean to directly ship a Covered Product into California for sale in
16 California or to sell a Covered Product to a distributor that RIVALUS knows will sell the
17 Covered Product in California.

18 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
19 Level" or "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be
20 calculated using the following formula: micrograms of lead or cadmium per gram of product,
21 multiplied by grams of product per serving of the product (using the largest serving size
22 appearing on the product label), multiplied by servings of the product per day (using the largest
23 number of servings expressly recommended, as appearing on the product label; or, if none
24 expressly appears, than multiplied by 1), which equals micrograms of lead or cadmium
25 exposure per day.

26 **3.2 Clear and Reasonable Warnings**

27 If RIVALUS is required to provide a warning pursuant to Section 3.1, the following
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1 warning must be utilized:

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

4 RIVALUS shall use the phrase "cancer and" in the warning only if the maximum daily dose
5 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
6 the quality control methodology set forth in Section 3.4. The terms lead and/or cadmium shall be
7 utilized in the warning to accurately reflect which chemical is present in the Covered Product.

8 The warning shall be securely affixed to or printed upon the container or label of each
9 Covered Product. In addition, for Covered Products sold over RIVALUS' website, the warning
10 shall appear prior to completing checkout on RIVALUS' website when a California delivery
11 address is indicated for any purchase of any Covered Product.

12 The warning shall be at least the same size as the largest of any other health or safety
13 warnings also appearing on its website or on the label or container of RIVALUS' product
14 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
15 Statements about Proposition 65 may directly precede or directly follow the Warning.

16 RIVALUS must display the above warnings with such conspicuousness, as compared with
17 other words, statements, or design of the label or container, as applicable, to render the warning
18 likely to be read and understood by an ordinary individual under customary conditions of purchase
19 or use of the product.

20 **3.3 Reformulated Covered Products**

21 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" or
22 "Daily Cadmium Exposure Level" when the maximum suggested dose is taken as directed on the
23 Reformulated Covered Product's label, contains no more than 0.5 micrograms of lead per day or
24 no more than 4.10 micrograms of cadmium per day as determined by the quality control
25 methodology described in Section 3.4.

26 **3.4 Testing and Quality Control Methodology**

27 **3.4.1** Beginning within one year of the Effective Date, RIVALUS shall
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1 arrange for lead or cadmium testing of the Covered Products at least once a year for a minimum
2 of three consecutive years by arranging for testing of five randomly selected samples of each of
3 the Covered Products, in the form intended for sale to the end-user, which RIVALUS intends to
4 sell or is manufacturing for sale in California, directly selling to a consumer in California or
5 "Distributing into California." The testing requirement does not apply to any of the Covered
6 Products for which RIVALUS has provided the warning specified in Section 3.2.

7 3.4.2 For purposes of measuring the "Daily Lead Exposure Level" or "Daily
8 Cadmium Exposure Level", the highest lead or cadmium detection result of the five (5)
9 randomly selected samples of the Covered Products will be controlling.

10 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
11 laboratory method that complies with the performance and quality control factors appropriate
12 for the method used, including limit of detection, qualification, accuracy, and precision that
13 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
14 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
15 method subsequently agreed to in writing by the Parties.

16 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
17 independent third party laboratory certified by the California Environmental Laboratory
18 Accreditation Program or an independent third-party laboratory that is registered with the
19 United States Food & Drug Administration.

20 3.4.5 Nothing in this Consent Judgment shall limit RIVALUS' ability to
21 conduct, or require that others conduct, additional testing of the Covered Products, including
22 the raw materials used in their manufacture.

23 4. SETTLEMENT PAYMENT

24 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
25 penalties, attorney's fees, and costs, RIVALUS shall make a total payment of \$87,500.00
26 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. RIVALUS shall
27 make this payment by wire transfer to ERC's escrow account, for which ERC will give
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1 RIVALUS the necessary account information. The Total Settlement Amount shall be
2 apportioned as follows:

3 4.2 \$25,996.00 shall be considered a civil penalty pursuant to California Health and
4 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$19,497.00) of the civil penalty to the
5 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
7 Code §25249.12(c). ERC will retain the remaining 25% (\$6,499.00) of the civil penalty.

8 4.3 \$3,360.00 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 4.4 \$25,998.17 shall be distributed to ERC in lieu of further civil penalties, for the
11 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
12 includes work, analyzing, researching and testing consumer products that may contain
13 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
14 the subject matter of the current action; (2) the continued monitoring of past consent judgments
15 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
16 donation of \$1,300.00 to the Community Science Institute to address reducing toxic chemical
17 exposures in California.

18 4.5 \$14,675.00 shall be distributed to William F. Wraith as reimbursement of ERC's
19 attorney's fees, while \$17,470.83 shall be distributed to ERC for its in-house legal fees.

20 **5. ENFORCEMENT OF CONSENT JUDGMENT**

21 No party may apply to the Court to enforce this Consent Judgment, unless that Party has first
22 provided 30 days written notice ("Notice Period") pursuant to Section 12 of this Consent
23 Judgment to the other Party of any alleged violations of this Consent Judgment. Additionally,
24 the Parties agree to meet and confer to resolve any alleged violations of this Consent Judgment
25 during the 30 day notice period, and further agree not to apply to the Court to enforce this
26 Consent Judgment until expiration of the Notice Period.

1 **6. MODIFICATION OF CONSENT JUDGMENT**

2 6.1 This Consent Judgment may be modified only (i) by written stipulation of the
3 Parties or pursuant to Section 6 and (ii) upon entry by the Court of a modified consent
4 judgment.

5 6.2 If RIVALUS seeks to modify this Consent Judgment under Section 6.1, then
6 RIVALUS must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
7 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
8 provide written notice to RIVALUS within thirty days of receiving the Notice of Intent. If ERC
9 notifies RIVALUS in a timely manner of ERC's intent to meet and confer, then the Parties shall
10 meet and confer in good faith as required in this Section. The Parties shall meet in person or
11 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.
12 Within thirty days of such meeting, if ERC disputes the proposed modification, ERC shall
13 provide to RIVALUS a written basis for its position. The Parties shall continue to meet and
14 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
15 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
16 confer period.

17 6.3 In the event that RIVALUS initiates or otherwise requests a modification under
18 Section 6.1, and the meet and confer process leads to a joint motion or application of the
19 Consent Judgment, RIVALUS shall reimburse ERC its costs and reasonable attorney's fees for
20 the time spent in the meet-and-confer process and filing and arguing the motion or application.

21 6.4 Where the meet-and-confer process does not lead to a joint motion or
22 application in support of a modification of the consent judgment, then either party may seek
23 judicial relief on its own. retention of jurisdiction, enforcement of consent

24 **7. JUDGMENT**

25 7.1 This Court shall retain jurisdiction of this matter to enforce, modify or
26 terminate this Consent Judgment.

27 7.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
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1 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
2 inform RIVALUS in a reasonably prompt manner of its test results, including information
3 sufficient to permit RIVALUS to identify the Covered Products at issue. RIVALUS shall,
4 within thirty days following such notice, provide ERC with testing information, from an
5 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
6 demonstrating RIVALUS' compliance with the Consent Judgment, if warranted. The Parties
7 shall first attempt to resolve the matter prior to ERC taking any further legal action.

8 **8. APPLICATION OF CONSENT JUDGMENT**

9 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
10 respective officers, directors, shareholders, members, employees, agents, parent companies,
11 subsidiaries, divisions, affiliates, franchisees, licensees, customers (excluding private labelers),
12 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment
13 shall have no
14 application to Covered Products which are distributed or sold exclusively outside the State of
15 California and which are not used by California consumers.

16 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

17 **9.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
18 behalf of itself and in the public interest, and RIVALUS and its respective officers, directors,
19 shareholders, members, employees, agents, parent companies, subsidiaries, divisions, affiliates,
20 suppliers, franchisees, licensees, customers (not including private label customers of
21 RIVALUS), distributors, wholesalers, retailers, and all other upstream and downstream entities
22 in the distribution chain of any Covered Product, and the predecessors, successors and assigns
23 of any of them (collectively, "Released Parties"), from any and all claims, actions, causes of
24 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that
25 could have been asserted from the handling, use, or consumption of the Covered Products, as to
26 any alleged violation of Proposition 65 or its implementing regulations arising from the failure
27 to provide Proposition 65 warnings on the Covered Products regarding lead or cadmium up to
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1 and including the Effective Date.

2 9.2 ERC on its own behalf only, on one hand, and RIVALUS on its own behalf
3 only, on the other, further waive and release any and all claims they may have against each
4 other for all actions or statements made or undertaken in the course of seeking or opposing
5 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
6 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
7 any Party's right to seek to enforce the terms of this Consent Judgment.

8 9.3 It is possible that other claims not known to the Parties arising out of the facts
9 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
10 discovered. ERC on behalf of itself only, on one hand, and RIVALUS, on the other hand,
11 acknowledge that this Consent Judgment is expressly intended to cover and include all such
12 claims up through the Effective Date, including all rights of action therefore. ERC and
13 RIVALUS acknowledge that the claims released in Sections 8.1 and 8.2 above may include
14 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
15 unknown claims. California Civil Code section 1542 reads as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
19 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
20 OR HER SETTLEMENT WITH THE DEBTOR.

21 ERC on behalf of itself only, on the one hand, and RIVALUS, on the other hand, acknowledge
22 and understand the significance and consequences of this specific waiver of California Civil
23 Code section 1542. Furthermore, ERC expressly agrees that any RIVALUS products
24 purchased or being investigated, as of the date of this Consent Judgment, by ERC, or its
25 officers, directors, shareholders, members, employees, agents, parent companies, subsidiaries,
26 divisions, and affiliates, shall fall within the scope of this release, and ERC therefore agrees
27 that any Proposition 65 claims relating to such products shall be barred by the release in this
28 Section. This Section in no way prevents ERC from enforcing the terms of this Consent
Judgment.

1 9.4 Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 or cadmium in the Covered Products as set forth in the Notice and the Complaint.

4 9.5 Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of RIVALUS'
6 products other than the Covered Products.

7 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **11. GOVERNING LAW**

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

13 **12. PROVISION OF NOTICE**

14 All notices required to be given to either Party to this Consent Judgment by the other shall
15 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
16 email may also be sent.

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

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Tel: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

23 With a copy to:

24 WILLIAM F. WRAITH
25 WRAITH LAW
26 24422 Avenida de la Carlota, Suite 400
27 Laguna Hills, CA 92653
28 Tel: (949) 452-1234
Fax: (949) 452-1102

1 NUTRIVO, LLC, individually and doing business
as RIVALUS and RIVALUS, INC.

2 Lon Messenger
3 Nutrivo, LLC
4 1785 N. Edgelawn Drive
Aurora, IL 60506

5 With a copy to:

6 MELISSA A. JONES
7 BAO M. VU
8 STOEL RIVES LLP
9 500 Capitol Mall, Suite 1600
Sacramento, CA 95814
10 Telephone: (916) 447-0700
11 Facsimile: (916) 447-4781
Email: melissa.jones@stoel.com
bao.vu@stoel.com

12 **13. COURT APPROVAL**

13 13.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
15 Consent Judgment.

16 13.2 If the California Attorney General objects to any term in this Consent Judgment,
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
18 prior to the hearing on the motion.

19 13.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
20 void and have no force or effect.

21 **14. EXECUTION AND COUNTERPARTS**

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

25 **15. DRAFTING**

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

7 **16. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

17 **17. ENTIRE AGREEMENT, AUTHORIZATION**

18 17.1 This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter herein, and any and all
20 prior discussions, negotiations, commitments and understandings related hereto. No
21 representations, oral or otherwise, express or implied, other than those contained herein have
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
23 herein, shall be deemed to exist or to bind any Party.

24 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
26 explicitly provided herein, each Party shall bear its own fees and costs.

1 18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
2 CONSENT JUDGMENT

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

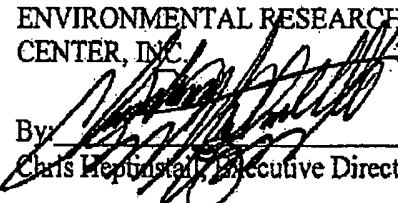
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
7 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11
12 IT IS SO STIPULATED:

13 Dated: 7/19/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

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15
16
17 Dated: 7/20, 2016

NUTRIVO, LLC, individually and doing
business as RIVALUS and RIVALUS, INC.

By: 
Its: LON MESSENGER
CFO

1 APPROVED AS TO FORM:

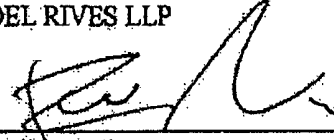
2 Dated: _____, 2016

WRAITH LAW

3 By: _____
4 William F. Wraith
5 Attorney for Plaintiff Environmental
6 Research Center, Inc.

6 Dated: July 20, 2016

STOEL RIVES LLP

7 By: 
8 Melissa A. Jones
9 Bao M. Vu
10 Attorneys for Defendant Nutrivo, LLC,
11 individually and doing business as
12 Rivalus and Rivalus, Inc.

12 **ORDER AND JUDGMENT**

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

15 IT IS SO ORDERED, ADJUDGED AND DECREED.

17 Dated: _____, 2016

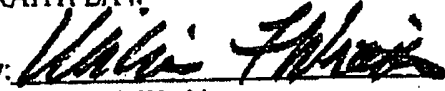
18 Judge of the Superior Court

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APPROVED AS TO FORM:

Dated: 7/21, 2016

WRAITH LAW

By: 
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

Dated: _____, 2016

STOEL RIVES LLP

By: _____
Melissa A. Jones
Bao M. Vu
Attorneys for Defendant Nutrivo, LLC,
individually and doing business as
Rivalus and Rivalus, Inc.

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/25, 2016

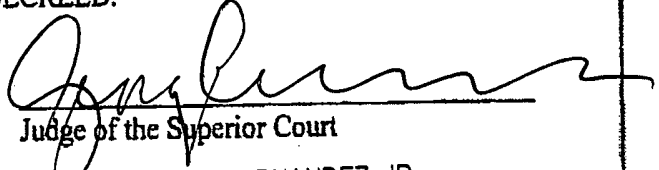

Judge of the Superior Court
GEORGE C. HERNANDEZ, JR.

EXHIBIT "A"

WRAITH LAW

24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

February 13, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Nutrivo, LLC, individually and doing business as Rivalus
Rivalus Inc.**

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

1. **Rivalus Inc. The AP Kit – Lead**
**** (*kit contains the below products*)
 - a. **Rivalus Inc. The AP Kit Alert Clinical Strength**
 - b. **Rivalus Inc. The AP Kit Pulse Clinical Strength**
2. **Rivalus Inc. (A Nutrivo Company) Enpulse- Lead**
3. **Rivalus Inc. (A Nutrivo Company) Shortcutz - Lead**
4. **Rivalus (A Nutrivo Company) Last Meal Smooth Vanilla - Lead**
5. **Rivalus (A Nutrivo Company) Clean Gainer Chocolate Fudge- Cadmium**

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

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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. Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while Cadmium and Cadmium Compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 13, 2012, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutrivo, LLC, individually and doing business as Rivalus, Rivalus Inc., and each 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 Nutrivo, LLC, individually and doing business as Rivalus, and Rivalus Inc.

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

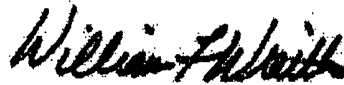
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: February 13, 2015



William F. Wraith

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 February 13, 2015, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Nutrivo, LLC, individually and doing
business as Rivalus
1785 North Edgelawn Drive
Aurora, IL 60506

Kenneth Clingen
(Registered Agent for Nutrivo, LLC,
individually and doing business as Rivalus)
2100 Manchester Road, Suite 1750
Wheaton, IL 60187

Current President or CEO
Rivalus Inc.
1785 North Edgelawn Drive
Aurora, IL 60506

The Corporation Trust Company
(Registered Agent for Nutrivo, LLC,
individually and doing business as Rivalus)
1209 Orange Street
Wilmington, DE 19801

Current President or CEO
Rivalus Inc.
1083 Queen Street, Suite 189
Halifax, Nova Scotia BCH 0B2
Canada

On February 13, 2015, 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 February 13, 2015, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on February 13, 2015, in Fort Oglethorpe, Georgia.


Tiffany Capchart

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

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County Post Office Box 720 Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	