

COPY



\*14861154\*

FILED  
ALAMEDA COUNTY

NOV - 8 2016

CLERK OF THE SUPERIOR COURT  
By Yestrada Deputy

TANYA A. GULESSERIAN (State Bar No. 198640)  
CHRISTINA M. CARO (State Bar No. 250797)  
ADAMS BROADWELL JOSEPH & CARDOZO  
601 Gateway Blvd., Suite 1000  
South San Francisco, CA 94080-7037  
Telephone: (650) 589-1660  
Fax No.: (650) 589-5062  
Email: tgulesserian@adamsbroadwell.com  
ccaro@adamsbroadwell.com

Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER, INC.

PEG CAREW TOLEDO (State Bar No. 181227)  
PEG CAREW TOLEDO, LAW CORPORATION  
3001 Douglas Blvd., Suite 340  
Roseville, CA 95661-3853  
Telephone: (916) 462-8950  
Fax No.: (916) 791-0175  
Email: peg@toledolawcorp.com

Attorneys for Defendants  
CYANOTECH CORPORATION  
and NUTREX HAWAII, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

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

Plaintiff,

v.

CYANOTECH CORPORATION, NUTREX HAWAII, INC. and DOES 1-100,

Defendants.

CASE NO. RG 15791194

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 et seq.

Action Filed: October 28, 2015

Trial Date: None Set

BY FAX

CORINNA CARDEN

SEP 23 2016

1     **1.     INTRODUCTION**

2             **1.1**     On October 28, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
3 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
4 filing 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 Cyanotech Corporation and Nutrex Hawaii, Inc. (collectively  
7 "Cyanotech") and DOES-100. In this action, ERC alleges that the products manufactured,  
8 distributed or sold by Cyanotech, as more fully described below, contain lead, a chemical listed  
9 under Proposition 65 as a carcinogen and reproductive toxin, and that such products expose  
10 consumers at a level requiring a Proposition 65 warning. The product is Nutrex Hawaii Inc. Green  
11 Complete Natural Vanilla Bean Flavor ("Covered Product"). ERC and Cyanotech are referred to  
12 individually as a "Party" or collectively as the "Parties."

13             **1.2**     ERC is a California non-profit corporation dedicated to, among other causes,  
14 helping safeguard the public from health hazards by reducing the use and misuse of hazardous and  
15 toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging  
16 corporate responsibility.

17             **1.3**     Cyanotech is a business entity that employs ten or more persons. Cyanotech  
18 arranges the manufacture, distribution and sale of the Covered Products.

19             **1.4**     The Complaint is based on allegations contained in ERC's Notice of Violation,  
20 dated June 15, 2015, that was served on the California Attorney General, other public enforcers,  
21 and Cyanotech. A true and correct copy of the Notice of Violation is attached as Exhibit A. More  
22 than 60 days have passed since the Notice of Violation was mailed and uploaded to the Attorney  
23 General's website, and no designated governmental entity has filed a complaint against Cyanotech  
24 with regard to the Covered Products or the alleged violations.

25             **1.5**     ERC's Notice of Violation and the Complaint allege that use of the Covered  
26 Product exposes persons in California to lead without first providing clear and reasonable  
27 warnings in violation of California Health and Safety Code section 25249.6. Cyanotech denies all  
28 material allegations contained in the Notice of Violation and Complaint and specifically denies

1 that the Covered Product required a Proposition 65 warning or otherwise caused harm to any  
2 person. Cyanotech asserts that any detectible levels of lead in the Covered Products are the result  
3 of naturally occurring lead levels, as provided for in California Code of Regulations, Title 27,  
4 Section 25501(a).

5 1.6 The Parties have entered into this Consent Judgment in order to settle, compromise  
6 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this  
7 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any  
8 of their respective officers, directors, shareholders, employees, agents, parent companies,  
9 subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors,  
10 wholesalers, or retailers. Except for the representations made above, nothing in this Consent  
11 Judgment shall be construed as an admission by Cyanotech or ERC of any fact, issue of law, or  
12 violation of law, nor shall compliance with this Consent Judgment be construed as an admission  
13 by Cyanotech or ERC of any fact, issue of law, or violation of law, at any time, for any purpose.

14 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall  
15 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
16 other or future legal proceeding unrelated to these proceedings.

17 1.8 The Effective Date of this Consent Judgment is the date on which it is entered as a  
18 Judgment by this Court.

## 19 2. JURISDICTION AND VENUE

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

## 27 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

### 28 3.1 Clear and Reasonable Warnings

00071299.3 PCT

2

STIPULATED CONSENT JUDGMENT

3441-014j

1 Six months after the Effective Date of this Consent Judgment, Cyanotech shall be  
2 permanently enjoined from Distributing into California, manufacturing for sale in California,  
3 and/or directly selling to a consumer in the State of California any Covered Product for which the  
4 maximum daily dose recommended on the label contains more than 0.5 micrograms (mcg) of lead,  
5 as calculated in accordance with the formula set forth in Section 3.4 and pursuant to the testing  
6 done in accordance with Section 3.6, unless Cyanotech complies with at least one of the required  
7 warning requirements set forth in Section 3.2 and Section 3.3. The term "Distributing into  
8 California" or "Distribute into California" means to ship any of the Covered Products into  
9 California for sale in California, or to sell or provide any of the Covered Products to any person or  
10 entity that Cyanotech knows will sell the Covered Product in California.

11 The warning shall be provided with such conspicuousness, as compared with other words,  
12 statements, designs, or devices on the container or labeling as to render it likely to be read and  
13 understood by an ordinary individual under customary conditions of purchase or use. No other  
14 statements may accompany the warning on the product label. The warning shall be at least the  
15 same size as the largest of any other health or safety warnings on the container or labeling, as  
16 applicable, and the word "WARNING" shall be in all capital letters and in bold print. The  
17 warning shall be contained in the same section of the container or labeling, as applicable, which  
18 states other safety warnings concerning the use of the Covered Product.

### 19 3.2 The Warning Language

20 The warning language shall be one of the following:

21 [~~California Proposition 65~~] WARNING [~~(California Proposition 65)~~] This  
22 product contains [lead,] [a] chemical[s] known [to the State of California] to  
cause [cancer and] birth defects or other reproductive harm.

23 [~~California Proposition 65~~] WARNING [~~(California Proposition 65)~~] This  
24 product contains [lead,] [a] substance[s] known [to the State of California] to  
cause [cancer and] birth defects or other reproductive harm.

25 The text in brackets in the warnings above is optional except that the words "cancer and" shall be  
26 included in the warning only if the maximum recommended daily dose stated on the Covered  
27 Product's label contains more than 15 micrograms (mcg) of lead as calculated in accordance with  
28 the formula set forth in Section 3.4 below.

1           **3.3     Warning Method**

2           For those Covered Products that are subject to the warning requirement of Section 3.1,  
3     Cyanotech shall provide the warning language in Section 3.2 on the Covered Product. The  
4     warning above shall be permanently affixed to or printed on the labeling of each Covered Product  
5     with such conspicuousness as compared with other words, statements, designs, or devices on the  
6     container or labeling as to render it likely to be read and understood by an ordinary individual  
7     under customary conditions of purchase or use.

8           **3.4     Calculation of Lead Levels**

9           For purposes of this Consent Judgment and determining Cyanotech's compliance with  
10    Proposition 65, daily lead exposure levels shall be calculated using the following formula:  
11    micrograms of lead per gram of product, multiplied by grams of product per serving of the product  
12    (using the largest serving size appearing on the product label), multiplied by servings of the  
13    product per day (using the largest number of servings in a recommended dosage appearing on the  
14    product label) which equals micrograms of lead exposure per day.

15          **3.5     Reformulated Covered Products**

16          A Reformulated Covered Product is one for which the maximum recommended daily  
17    serving on the label contains no more than 0.5 micrograms of lead per day as calculated pursuant  
18    to Section 3.4.

19          **3.6     Testing and Quality Control Methodology**

20          (a) Beginning within one year of the Effective Date, Cyanotech shall conduct testing of the  
21    Covered Products for lead content for a minimum of four (4) consecutive years, except that the  
22    testing requirement of this Consent Judgment does not apply to any of the Covered Products for  
23    which Cyanotech has provided the warning specified in Section 3.2. For purposes of determining  
24    which warning, if any, is required pursuant to Section 3.2, the second-highest lead detection  
25    results of the five (5) randomly selected samples of the Covered Products will be controlling.

26          (b) All testing for lead required by this Consent Judgment shall be performed using  
27    Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") or any other testing method  
28    subsequently agreed to in writing by the Parties.

1 (c) All testing pursuant to this Consent Judgment shall be performed by an independent  
2 third-party laboratory certified by the California Environmental Laboratory Accreditation Program  
3 or a laboratory that is registered with the United States Food & Drug Administration.

4 (d) If no warning has been provided pursuant to Section 3.2, Cyanotech shall test each of  
5 the Covered Products at least once a year for a minimum of four (4) consecutive years by testing  
6 five (5) randomly selected samples of each Covered Product (in the form intended for sale to the  
7 end-user) which Cyanotech intends to sell or is manufacturing for sale in California, directly  
8 selling to a consumer in California, or Distributing into California. If tests conducted pursuant to  
9 this Section demonstrate that no warning is required for a Covered Product during each of four (4)  
10 consecutive years, then the testing requirements of this Section will no longer be required as to  
11 that Covered Product. However, if during or after the four (4) year period, Cyanotech changes  
12 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered  
13 Products, Cyanotech shall test that Covered Product annually for at least four (4) consecutive  
14 years after such change is made.

15 (e) Cyanotech shall retain all test results and documentation for a period of four (4) years  
16 from the date of each test. Nothing in this Consent Judgment shall limit Cyanotech's ability to  
17 conduct, or require that others conduct, additional testing of the Covered Products, including the  
18 raw materials used in their manufacture.

19 **4. SETTLEMENT PAYMENT**

20 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,  
21 attorney's fees, and costs, Cyanotech shall make a total payment of \$85,000.00 to ERC within ten  
22 (10) days of the Effective Date. Cyanotech shall make this payment by wire transfer to ERC's  
23 escrow account, for which ERC will give Cyanotech the necessary account information. Said  
24 payment shall be for the following:

25 **4.2** \$21,320.00 shall be payable as civil penalties pursuant to California Health and  
26 Safety Code section 25249.7(b)(1). Of this amount, ERC shall remit 75% \$15,990.00 to the  
27 Office of Environmental Health Hazard Assessment ("OEHHA") and \$5,330.00 shall be retained  
28 by ERC. California Health and Safety Code section 25249.12(c)(1) & (d). ERC will be

1 responsible for forwarding the civil penalty.

2 4.3 \$650.21 shall be payable to ERC as reimbursement to ERC for reasonable costs  
3 incurred in bringing this action.

4 4.4 \$21,323.19 shall be payable to ERC in lieu of further civil penalties, for the day-to-  
5 day business activities such as (1) continued enforcement of Proposition 65, which includes work,  
6 analyzing, researching and testing consumer products that may contain Proposition 65 chemicals,  
7 focusing on the same or similar type of ingestible products that are the subject matter of the  
8 current action; (2) the continued monitoring of past consent judgments and settlements to ensure  
9 companies are in compliance with Proposition 65; and (3) giving a donation of \$1,066.00 to the  
10 Center for Environmental Health to address reducing toxic chemical exposures in California.

11 4.5 \$23,785.50 shall be payable to Adams Broadwell Joseph and Cardozo as  
12 reimbursement of ERC's attorney's fees while \$17,921.10 shall be distributed to ERC for its in-  
13 house legal fees.

14 4.6 In the event that Cyanotech fails to remit the Total Settlement Payment owed under  
15 Section 4 of this Consent Judgment on or before the Due Date, Cyanotech shall be deemed to be in  
16 material breach of its obligations under this Consent Judgment. ERC shall provide written notice  
17 of the delinquency to Cyanotech via electronic mail. If Cyanotech fails to deliver the Total  
18 Settlement payment within five (5) days from the written notice, the Total Settlement Payment  
19 shall become immediately due and payable and shall accrue interest at the statutory judgment  
20 interest rate provided in the Code of Civil Procedure section 685.010. Additionally, Cyanotech  
21 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due  
22 under this Consent Judgment.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 5.1 This Consent Judgment may be modified (i) by written stipulation of the Parties or  
25 pursuant to Section 5.3 and (ii) upon entry by the Court of a modified consent judgment.

26 5.2 If Cyanotech seeks to modify this Consent Judgment under Section 5.1, then  
27 Cyanotech must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
28 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must

1 provide written notice to Cyanotech within thirty (30) days of receiving the Notice of Intent. If  
2 ERC notifies Cyanotech in a timely manner of ERC's intent to meet and confer, then the Parties  
3 shall meet and confer in good faith as required in this Section. The Parties shall meet in person or  
4 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within  
5 thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall provide to  
6 Cyanotech a written basis for its position. The Parties shall continue to meet and confer for an  
7 additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may agree in  
8 writing to different deadlines for the meet-and-confer period.

9 5.3 In the event that Cyanotech initiates or otherwise requests a modification under  
10 Section 5.1, and the meet and confer process leads to a joint motion or joint application of the  
11 Consent Judgment, Cyanotech shall reimburse ERC its costs and reasonable attorney's fees for the  
12 time spent in the meet-and-confer process and filing and arguing the motion or application.

13 5.4 Where the meet-and-confer process does not lead to a joint motion or joint  
14 application in support of a modification of the Consent Judgment, then either Party may seek  
15 judicial relief on its own.

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

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

19 6.2 Only after it complies with Section 15 below may any Party, by motion or  
20 application for an order to show cause filed with this Court, enforce the terms and conditions  
21 contained in this Consent Judgment.

22 6.3 If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered  
23 Product (for which ERC alleges that no warning has been provided), then ERC shall inform  
24 Cyanotech in a reasonably prompt manner of its test results, including information sufficient to  
25 permit Cyanotech to identify the Covered Products at issue. Cyanotech shall, within thirty (30)  
26 days following such notice, provide ERC with testing information, from an independent third-  
27 party laboratory meeting the requirements of Section 3.6, demonstrating Defendant's compliance  
28 with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior



1 to ERC taking any further legal action.

2 **7. APPLICATION OF CONSENT JUDGMENT**

3 7.1 This Consent Judgment may apply to, be binding upon, and benefit the Parties and  
4 their respective officers, directors, shareholders, employees, agents, parent companies,  
5 subsidiaries, divisions, affiliates, franchisees, licensees, customers (excluding private labelers),  
6 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment  
7 shall have no application to Covered Products which are distributed or sold exclusively outside the  
8 State of California and which are not used by California consumers.

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

10 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on  
11 behalf of itself and in the public interest, and Cyanotech and its respective officers, directors,  
12 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates under  
13 common ownership of Cyanotech, suppliers, franchisees, licensees, customers (not including  
14 private label customers of Cyanotech), distributors, wholesalers, retailers, and all other upstream  
15 and downstream entities in the distribution chain of any Covered Product, and the predecessors,  
16 successors and assigns of any of them (collectively, "Released Parties), from any and all claims,  
17 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses  
18 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising  
19 from the failure to provide Proposition 65 warnings on the Covered Products regarding lead up  
20 through and including six months from the Effective Date ("the Compliance Date").

21 8.2 It is possible that other claims not known to the Parties arising out of the facts  
22 alleged in the Notice of Violation or the Complaint and relating to the Covered Products will  
23 develop or be discovered. ERC on behalf of itself only, on one hand, and Cyanotech, on the other  
24 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such  
25 claims up through the Effective Date, including all rights of action therefore. ERC and Cyanotech  
26 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown claims,  
27 and nevertheless waive California Civil Code section 1542 as to any such unknown claims.

28 California Civil Code section 1542 reads as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
2 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME  
3 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
4 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
5 DEBTOR.

6 ERC on behalf of itself only, on the one hand, and Cyanotech, on the other hand, acknowledge and  
7 understand the significance and consequences of this specific waiver of California Civil Code  
8 section 1542.

9 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute  
10 compliance by any Released Party with Proposition 65 regarding alleged exposures to lead in the  
11 Covered Products as set forth in the Notice of Violation and the Complaint.

12 **8.4** Nothing in this Consent Judgment is intended to apply to any occupational or  
13 environmental exposures arising under Proposition 65, nor shall it apply to any of Cyanotech's  
14 products other than the Covered Products.

15 **8.5** ERC and Cyanotech each release and waive all claims they may have against each  
16 other for any statements or actions made or undertaken by them in connection with the Notice of  
17 Violation or the Complaint up through and including the Effective Date; provided, however, that  
18 nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this  
19 Consent Judgment.

## 20 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 23 **10. GOVERNING LAW**

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

## 26 **11. PROVISION OF NOTICE**

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

1           **FOR ENVIRONMENTAL RESEARCH CENTER:**

2           Anne Barker, In-House Counsel  
3           Environmental Research Center  
4           3111 Camino Del Rio North, Suite 400  
5           San Diego, CA 92108

6           With a copy to:

7           Christina M. Caro  
8           Adams Broadwell Joseph & Cardozo  
9           601 Gateway Blvd., Suite 1000  
10          South San Francisco, CA 94080-7037

11           **FOR CYANOTECH CORPORATION AND NUTREX, HAWAII, INC.:**

12          Jennifer Johansen  
13          Cyanotech Corporation  
14          73-4460 Queen Kaahumanu Highway, Suite 102  
15          Kailua-Kona, HI 96740

16          With a copy to:

17          Peg Carew Toledo  
18          Peg Carew Toledo, Law Corporation  
19          3001 Douglas Blvd., Suite 340  
20          Roseville, CA 95661-3853

21           **12. COURT APPROVAL**

22           12.1 If this Consent Judgment is not approved by the Court, it shall be void and have no  
23           force or effect. The Parties shall use their best efforts to support entry of this Consent Judgment.

24           12.2 If the California Attorney General objects to any term in this Consent Judgment,  
25           the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
26           prior to the hearing on the motion.

27           12.3 ERC shall comply with California Health and Safety Code section 25249.7(f) and  
28           with Title II of the California Code Regulations, Section 3003.

29           **13. EXECUTION AND COUNTERPARTS**

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

33           **14. DRAFTING**

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

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

7 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
8 Judgment entered by the Court, the Parties shall meet in person, by telephone, and/or in  
9 writing and endeavor to resolve the dispute in an amicable manner. No action or motion  
10 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

11 **16. ENFORCEMENT**

12 ERC may, by motion or order to show cause, before the Superior Court of Alameda  
13 County, enforce the terms and conditions contained in this Consent Judgment.

14 **17. ENTIRE AGREEMENT, AUTHORIZATION**

15 17.1 This Consent Judgment contains the sole and entire agreement and understanding  
16 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
17 negotiations, commitments and understandings related hereto. No representations, oral or  
18 otherwise, express or implied, other than those contained herein have been made by any Party. No  
19 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist  
20 or to bind any Party.

21 17.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
22 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
23 provided herein, each Party shall bear its own fees and costs.

24 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
25 **CONSENT JUDGMENT**

26 This Consent Judgment has come before the Court upon the request of the Parties. The  
27 Parties request the Court to fully review this Consent Judgment and, being fully informed  
28 regarding the matters which are the subject of this action, make the findings pursuant to California

1 Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent  
2 Judgment.

3 IT IS SO STIPULATED:

4  
5 Dated: 8/4, 2016

ENVIRONMENTAL RESEARCH CENTER

6  
7 By:   
8 Chris Henthall, Executive Director

9 Dated: Aug 8, 2016

CYANOTECH CORPORATION

10  
11 By: Herold A. Greenberg  
12 Interim President + CEO

13  
14 Dated: Aug 8, 2016

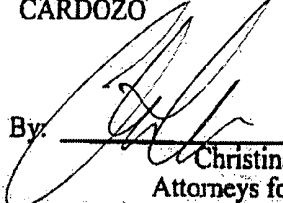
NUTREX HAWAII, INC.

15  
16 By: Herold A. Greenberg  
17 Interim President + CEO

18 APPROVED AS TO FORM:

19 Dated: August 8, 2016

ADAMS BROADWELL JOSEPH &  
CARDOZO

20  
21 By:   
22 Christina Caro  
23 Attorneys for Plaintiff  
Environmental Research Center, Inc.

24 Dated: August 5, 2016

PEG CAREW TOLEDO, LAW  
CORPORATION

25  
26 By: Peg Carew Toledo  
27 Peg Carew Toledo  
28 Attorneys for Defendants  
Cyanotech Corporation and Nutrex Hawaii, Inc.

00071299.3 PCT

12

STIPULATED CONSENT JUDGMENT

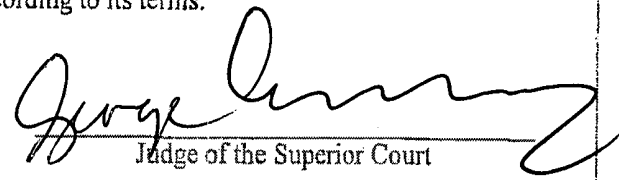
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JUDGMENT

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

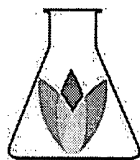
Dated:

11/8/2016

  
\_\_\_\_\_  
Judge of the Superior Court

Judge of the Superior Court

# EXHIBIT A



## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

June 15, 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 am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product 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 this product. 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:

**Cyanotech Corporation  
Nutrex Hawaii, Inc.**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

**Nutrex Hawaii Inc. Green Complete Natural Vanilla Bean Flavor - 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.



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

June 15, 2015

Page 2

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

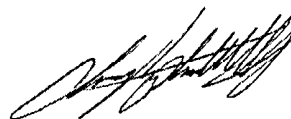
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of this product. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred 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 June 15, 2012, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. 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 this product with appropriate warnings that they are being exposed to this chemical.

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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

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

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Cyanotech Corporation, Nutrex Hawaii, 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, Inc.'s Notice of Proposition 65 Violations by Cyanotech Corporation and Nutrex Hawaii, Inc.**

I, Chris Heptinstall, 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 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: June 15, 2015

---

Chris Heptinstall

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

June 15, 2015

Page 4

**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 June 15, 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Cyanotech Corporation  
73-4460 Queen Kaahumanu Highway  
Suite 102  
Kailua Kona, HI 96740

The Corporation Trust Company of Nevada  
(Cyanotech Corporation's Registered Agent for  
Service of Process)  
311 South Division Street  
Carson City, NV 89703

Current President or CEO  
Cyanotech Corporation  
6100 Neil Road, Suite 500  
Reno, NV 89511

Jole Deal  
(Cyanotech Corporation's Registered Agent for  
Service of Process)  
73-4460 Queen Kaahumanu Highway  
Suite 102  
Kailua Kona, HI 96740

Current President or CEO  
Nutrex Hawaii, Inc.  
73-4460 Queen Kaahumanu Highway  
Suite 102  
Kailua Kona, HI 96740

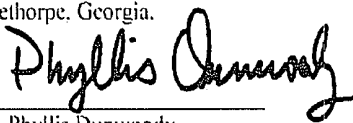
Jole Deal  
(Nutrex Hawaii, Inc.'s Registered Agent for  
Service of Process)  
73-4460 Queen Kaahumanu Highway  
Suite 102  
Kailua Kona, HI 96740

On June 15, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On June 15, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on June 15, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 15, 2015

Page 5

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 4<sup>th</sup> 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, 2<sup>nd</sup> 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., 3<sup>rd</sup> 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 12<sup>th</sup> 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 2<sup>nd</sup> 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,  
16<sup>th</sup> Floor  
San Jose, CA 95113