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FILED
ALAMEDA COUNTY

APR 21 2017

CLERK OF THE SUPERIOR COURT

By: Myrtle R...
Deputy

FEB 08 2017

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

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

17 Plaintiff,

18 v.

19 PROGENEX HOLDINGS, LLC and DOES
20 1-25, Inclusive,

21 Defendants.

CASE NO. RG16842984

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 19, 2016

Trial Date: None set

22
23 **1. INTRODUCTION**

24 **1.1** On December 19, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"),
25 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
26 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
27 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
28 against PROGENEX HOLDINGS, LLC ("PROGENEX") and Does 1-25. In this action, ERC

1 alleges that a number of products manufactured, distributed, or sold by PROGENEX contain
2 lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive
3 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.
4 These products (referred to hereinafter individually as a "Covered Product" or collectively as
5 "Covered Products") are:

- 6 • Progenex Recovery Belgian Chocolate - Lead
- 7 • Progenex Recovery Chocolate Peanut Butter Smash - Lead
- 8 • Progenex Recovery Strawberry Crème - Lead
- 9 • Progenex Recovery Loco Mocha - Lead
- 10 • Progenex More Muscle Belgian Chocolate - Lead
- 11 • Progenex More Muscle Strawberry Crème - Lead
- 12 • Progenex More Muscle Loco Mocha - Lead
- 13 • Progenex The Bar Toasted Coconut Almond - Lead
- 14 • Progenex The Bar Peanut Butter Caramel Crunch - Lead
- 15 • Progenex Cocoon Silk Chocolate - Lead
- 16 • Progenex Cocoon Cinnamon Slumber - Lead
- 17 • Progenex Build Ignition Blend - Lead
- 18 • Progenex Recovery Tropical Vanilla - Lead
- 19 • Progenex More Muscle Cookies & Cream - Lead
- 20 • Progenex More Muscle Chocolate Peanut Butter Smash – Lead,
21 Cadmium
- 22 • Progenex Flow Island Punch - Lead

23 1.2 ERC and PROGENEX are hereinafter referred to individually as a "Party" or
24 collectively as the "Parties."

25 1.3 ERC is a 501(c)(3) California non-profit corporation dedicated to, among other
26 causes, helping safeguard the public from health hazards by reducing the use and misuse of
27 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
28 and encouraging corporate responsibility.

1 **1.4** For purposes of this Consent Judgment, the Parties agree that PROGENEX is a
2 business entity that has employed ten or more persons at all times relevant to this action, and
3 qualifies as a “person in the course of business” within the meaning of Proposition 65.
4 PROGENEX manufactures, distributes, and/or sells the Covered Products.

5 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
6 dated April 29, 2016 and July 20, 2016 that were served on the California Attorney General,
7 other public enforcers, and PROGENEX (“Notices”). True and correct copies of the 60-Day
8 Notices dated April 29, 2016 and July 20, 2016 are attached hereto as **Exhibits A and B**
9 respectively and each is incorporated herein by reference. More than 60 days have passed since
10 the Notices were served on the Attorney General, public enforcers, and PROGENEX and no
11 designated governmental entity has filed a complaint against PROGENEX with regard to the
12 Covered Products or the alleged violations.

13 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
14 persons in California to lead and/or cadmium without first providing clear and reasonable
15 warnings in violation of California Health and Safety Code section 25249.6. PROGENEX
16 denies all material allegations contained in the Notices and Complaint.

17 **1.7** The Parties have entered into this Consent Judgment in order to settle,
18 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
19 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
20 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
21 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
22 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
23 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
24 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
25 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
26 purpose.

1 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
3 current or future legal proceeding unrelated to these proceedings.

4 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
5 a Judgment by this Court.

6 **2. JURISDICTION AND VENUE**

7 For purposes of this Consent Judgment and any further court action that may become
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
9 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
10 over PROGENEX as to the acts alleged in the Complaint that venue is proper in Alameda
11 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
12 resolution of all claims up through and including the Effective Date which were or could have
13 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

15 **3.1** Beginning on the Effective Date, PROGENEX shall be permanently enjoined
16 from manufacturing for sale in the State of California, "Distributing into the State of
17 California", or directly selling in the State of California, any Covered Products which exposes a
18 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
19 "Daily Cadmium Exposure Level" of more than 4.10 micrograms of cadmium per day unless it
20 meets the warning requirements under Section 3.2.

21 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
22 of California" shall mean to directly ship a Covered Product into California for sale in
23 California or to sell a Covered Product to a distributor that PROGENEX knows or has reason to
24 know will sell the Covered Product in California.

25 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
26 Level" and "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be
27 calculated using the following formula: micrograms of lead or cadmium per gram of product,
28 multiplied by grams of product per serving of the product (using the largest serving size

1 appearing on the product label), multiplied by servings of the product per day (using the largest
2 number of servings in a recommended dosage appearing on the product label), which equals
3 micrograms of lead or cadmium exposure per day.

4 **3.2 Clear and Reasonable Warnings**

5 If PROGENEX is required to provide a warning pursuant to Section 3.1, the following
6 warning must be utilized (“Warning”):

7 **⚠ WARNING:** This product can expose you to chemicals including lead and cadmium
8 which are known to the State of California to cause [cancer and] birth defects or other
9 reproductive harm. For more information got to www.P65Warnings.ca.gov.

10 PROGENEX shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure
11 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
12 methodology set forth in Section 3.4.

13 The Warning shall be securely affixed to or printed upon the container or label of each
14 Covered Product distributed into the State of California as defined in Section 3.1.1. In addition,
15 for any Covered Product sold over the internet, the Warning shall appear on the checkout page
16 when a California delivery address is indicated for any purchase of any Covered Product. An
17 asterisk or other identifying method must be utilized to identify which products on the checkout
18 page are subject to the Warning.

19 The Warning shall be at least the same size as the largest of any other health or safety
20 warnings also appearing on its website or on the label or container of PROGENEX’s product
21 packaging and the word “WARNING” shall be in all capital letters and in bold print. No
22 statements contradicting or conflicting with the Warning shall accompany the Warning.

23 PROGENEX must display the above Warning with such conspicuousness, as compared
24 with other words, statements, design of the label, container, or on its website, as applicable, to
25 render the Warning likely to be read and understood by an ordinary individual under customary
26 conditions of purchase or use of the product.

27 **3.3 Reformulated Covered Products**

28 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no

1 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more
2 than 4.10 micrograms of cadmium per day as determined by the quality control methodology
3 described in Section 3.4.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, PROGENEX shall
6 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
7 minimum of five consecutive years by arranging for testing of five randomly selected samples
8 of each of the Covered Products, in the form intended for sale to the end-user, which
9 PROGENEX intends to sell or is manufacturing for sale in California, directly selling to a
10 consumer in California or "Distributing into the State of California." If tests conducted
11 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
12 each of five consecutive years, then the testing requirements of this Section will no longer be
13 required as to that Covered Product. However, if during or after the five-year testing period,
14 PROGENEX changes ingredient suppliers for any of the Covered Products and/or reformulates
15 any of the Covered Products, PROGENEX shall test that Covered Product annually for at least
16 four (4) consecutive years after such change is made.

17 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
18 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five
19 (5) randomly selected samples of the Covered Products will be controlling.

20 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
21 laboratory method that complies with the performance and quality control factors appropriate
22 for the method used, including limit of detection, qualification, accuracy, and precision that
23 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
25 method subsequently agreed to in writing by the Parties and approved by the Court through
26 entry of a modified consent judgment.

27 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
28 independent third party laboratory certified by the California Environmental Laboratory

1 Accreditation Program or an independent third-party laboratory that is registered with the
2 United States Food & Drug Administration.

3 **3.4.5** Nothing in this Consent Judgment shall limit PROGENEX's ability to
4 conduct, or require that others conduct, additional testing of the Covered Products, including
5 the raw materials used in their manufacture.

6 **3.4.6** Within thirty (30) days of ERC's written request, PROGENEX shall
7 deliver lab reports obtained pursuant to Section 3.4 to ERC. PROGENEX shall retain all test
8 results and documentation for a period of five years from the date of each test.

9 **4. SETTLEMENT PAYMENT**

10 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
11 attorney's fees, and costs, PROGENEX shall make a total payment to ERC of \$125,000.00
12 ("Total Settlement Amount") in six monthly installments plus 8% simple interest on the
13 balance remaining after the first payment. The Total Settlement Amount including interest
14 shall be paid on the following schedule ("Due Dates"):

- 15 \$20,833.33 due within 5 days of the Effective Date
- 16 \$21,527.77 due within 35 days of the Effective Date
- 17 \$21,388.89 due within 65 days of the Effective Date
- 18 \$21,250.00 due within 95 days of the Effective Date
- 19 \$21,111.11 due within 125 days of the Effective Date
- 20 \$20,972.24 due within 155 days of the Effective Date

21 PROGENEX shall make these payment by wire transfer to ERC's escrow account, for which
22 ERC will give PROGENEX the necessary account information. The Total Settlement Amount
23 shall be apportioned as follows:

24 **4.2** \$48,572.05 shall be considered a civil penalty pursuant to California Health and
25 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$36,429.04) of the civil penalty to
26 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
28

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$12,143.01) of the civil
2 penalty.

3 4.3 \$4,437.80 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 4.4 \$ 36,428.97 shall be distributed to ERC as an Additional Settlement Payment
6 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
7 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
8 caused by Defendant in this matter. These activities are detailed below and support ERC’s
9 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
10 supplement products in California. ERC’s activities have had, and will continue to have, a direct
11 and primary effect within the State of California because California consumers will be benefitted
12 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
13 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
14 the products.

15 Based on a review of past years’ actual budgets, ERC is providing the following list of
16 activities ERC engages in to protect California consumers through Proposition 65 citizen
17 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
18 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
19 supplement products that may contain lead and/or cadmium and are sold to California
20 consumers. This work includes continued monitoring and enforcement of past consent judgments
21 and settlements to ensure companies are in compliance with their obligations thereunder, with a
22 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
23 also includes investigation of new companies that ERC does not obtain any recovery through
24 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-25%): maintaining
25 ERC’s Voluntary Compliance Program by acquiring products from companies, developing and
26 maintaining a case file, testing products from these companies, providing the test results and
27 supporting documentation to the companies, and offering guidance in warning or implementing a
28 self-testing program for lead and/or cadmium in dietary supplement products; and (3) “GOT

1 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
2 numbers of contaminated products that reach California consumers by providing access to free
3 testing for lead in dietary supplement products (Products submitted to the program are screened
4 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
5 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
6 that submitted the product).

7 ERC shall be fully accountable in that it will maintain adequate records to document and
8 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
9 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
10 shall provide the Attorney General, within thirty days of any request, copies of documentation
11 demonstrating how such funds have been spent.

12 4.5 \$10,045.00 shall be distributed to William F. Wraith as reimbursement of ERC's
13 attorney's fees, while \$25,516.18 shall be distributed to ERC for its in-house legal fees. Except
14 as explicitly provided herein, each Party shall bear its own fees and costs.

15 4.6 In the event that PROGENEX fails to remit the Total Settlement Payment owed
16 under Section 4 of this Consent Judgment on or before the Due Date, PROGENEX shall be
17 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
18 provide written notice of the delinquency to PROGENEX via electronic mail. If PROGENEX
19 fails to deliver the Total Settlement Payment within ten (10) days from the written notice, the
20 Total Settlement Payment shall accrue interest at the statutory judgment interest rate provided
21 in the Code of Civil Procedure section 685.010. Additionally, PROGENEX agrees to pay
22 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this
23 Consent Judgment.

24 5. MODIFICATION OF CONSENT JUDGMENT

25 5.1 This Consent Judgment may be modified only (i) by written stipulation of the
26 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
27 judgment.
28

1 5.2 If PROGENEX seeks to modify this Consent Judgment under Section 5.1, then
2 PROGENEX must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
3 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
4 must provide written notice to PROGENEX within thirty (30) days of receiving the Notice of
5 Intent. If ERC notifies PROGENEX in a timely manner of ERC's intent to meet and confer,
6 then the Parties shall meet and confer in good faith as required in this Section. The Parties
7 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
8 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
9 modification, ERC shall provide to PROGENEX a written basis for its position. The Parties
10 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
11 remaining disputes. Should it become necessary, the Parties may agree in writing to different
12 deadlines for the meet-and-confer period.

13 5.3 In the event that PROGENEX initiates or otherwise requests a modification
14 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
15 Consent Judgment, PROGENEX shall reimburse ERC its costs and reasonable attorney's fees
16 for the time spent in the meet-and-confer process and filing and arguing the motion or
17 application.

18 5.4 Where the meet-and-confer process does not lead to a joint motion or
19 application in support of a modification of the Consent Judgment, then either Party may seek
20 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
21 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
22 means a party who is successful in obtaining relief more favorable to it than the relief that the
23 other party was amenable to providing during the Parties' good faith attempt to resolve the
24 dispute that is the subject of the modification.

25 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
26 **JUDGMENT**

27 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
28 this Consent Judgment.

1 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
2 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
3 inform PROGENEX in a reasonably prompt manner of its test results, including information
4 sufficient to permit PROGENEX to identify the Covered Products at issue. PROGENEX shall,
5 within thirty (30) days following such notice, provide ERC with testing information, from an
6 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
7 demonstrating PROGENEX's compliance with the Consent Judgment, if warranted. The
8 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
18 on behalf of itself and in the public interest, and PROGENEX, of any alleged violation of
19 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
20 exposure to lead from the handling, use, or consumption of the Covered Products and fully
21 resolves all claims that have been or could have been asserted in this action up to and including
22 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.
23 ERC, on behalf of itself and in the public interest, hereby discharges PROGENEX and its
24 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
25 divisions, affiliates under common ownership, suppliers, franchisees, licensees, customers (not
26 including private label customers of PROGENEX), distributors, wholesalers, retailers, and all
27 other upstream and downstream entities in the distribution chain of any Covered Product, and
28 the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

1 ERC hereby fully releases and discharges the Released Parties from any and all claims, actions,
2 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
3 asserted, or that could have been asserted as to any alleged violation of Proposition 65 or its
4 implementing regulations from the handling, use, or consumption of the Covered Products,
5 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
6 lead and/or cadmium up to and including the Effective Date.

7 **8.2** ERC on its own behalf only, and PROGENEX on its own behalf only,
8 further waive and release any and all claims they may have against each other for all actions or
9 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
10 65 in connection with the Notices and Complaint up through and including the Effective Date,
11 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
12 enforce the terms of this Consent Judgment.

13 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
14 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
15 discovered. ERC on behalf of itself only, and PROGENEX on behalf of itself only,
16 acknowledge that this Consent Judgment is expressly intended to cover and include all such
17 claims up through and including the Effective Date, including all rights of action therefore.
18 ERC and PROGENEX acknowledge that the claims released in Sections 8.1 and 8.2 above may
19 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
20 such unknown claims. California Civil Code section 1542 reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
24 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
25 OR HER SETTLEMENT WITH THE DEBTOR.

26 ERC on behalf of itself only, and PROGENEX on behalf of itself only, acknowledge and
27 understand the significance and consequences of this specific waiver of California Civil Code
28 section 1542.

1 **8.4** 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 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

4 **8.5** 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
6 PROGENEX's products other than the Covered Products.

7 **9. 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 **10. 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 **11. 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

29 **PROGENEX HOLDINGS, LLC**
30 Matrix Solutions LLC dba Progenex
31 Attn: Legal Department
32 41 East 400 North #236
33 Logan, UT 84321-4020

1
2 With a copy to:
3 GRADEN P. JACKSON
4 STRONG & HANNI, P.C.
5 9350 South 150 East, Suite 820
6 Sandy, UT 84070
7 Telephone: (801) 532-7080
8 Facsimile: (801) 596-1508

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11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall file a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
19 void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

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

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

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

11 **16. ENTIRE AGREEMENT, AUTHORIZATION**

12 **16.1** This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter herein, and any and all
14 prior discussions, negotiations, commitments, and understandings related hereto. No
15 representations, oral or otherwise, express or implied, other than those contained herein have
16 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
17 herein, shall be deemed to exist or to bind any Party.

18 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

20 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
21 **CONSENT JUDGMENT**

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

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

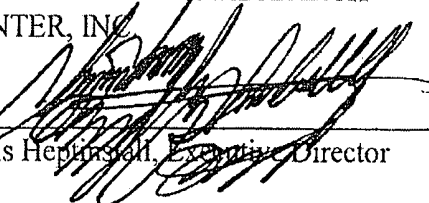
28 (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 **IT IS SO STIPULATED:**

3 Dated: 12/31, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

7 Dated: 12/31, 2016

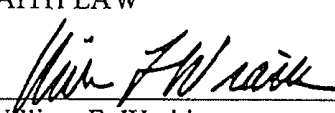
PROGENEX HOLDINGS, LLC

By: 
Its: Manager

11 **APPROVED AS TO FORM:**

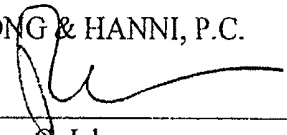
12 Dated: December 31, 2016

WRAITH LAW

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

17 Dated: 12/31, 2016

STRONG & HANNI, P.C.

By: 
Brian C. Johnson
Attorney for Defendant Progenex
Holdings, LLC

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26 Dated: 1/21, 2017


27 
Judge of the Superior Court

EXHIBIT "A"

WRAITH LAW

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

April 29, 2016

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

Dear Alleged Violator 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 Violator 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 Violator 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 Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Progenex Holdings, LLC

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

Progenex Recovery Belgian Chocolate - Lead
Progenex Recovery Chocolate Peanut Butter Smash - Lead
Progenex Recovery Strawberry Crème - Lead
Progenex Recovery Loco Mocha - Lead

April 29, 2016

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Progenex More Muscle Belgian Chocolate - Lead
Progenex More Muscle Strawberry Crème - Lead
Progenex More Muscle Loco Mocha - Lead
Progenex The Bar Toasted Coconut Almond - Lead
Progenex The Bar Peanut Butter Caramel Crunch - Lead
Progenex Cocoon Silk Chocolate - Lead
Progenex Cocoon Cinnamon Slumber - Lead
Progenex Build Ignition Blend - Lead
Progenex Recovery Tropical Vanilla - Lead
Progenex More Muscle Cookies & Cream - 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.

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 April 29, 2013, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products 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 Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, 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 chemical, as well as an expensive and time-consuming litigation.

April 29, 2016

Page 3

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 Progenex Holdings, LLC and its 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 Progenex Holdings, LLC

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-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 29, 2016



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 April 29, 2016, 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
Progenex Holdings, LLC
41 East 400 North, #226
Logan, UT 84321

Dwight Beckstrand
(Registered Agent for Progenex Holdings,
LLC)
Post Office Box 188
Kanosh, UT 84637

Current President or CEO
Progenex Holdings, LLC
925 West 100 North, Suite E
North Salt Lake, UT 84054

Corporate Direct, Inc.
(Registered Agent for Progenex Holdings,
LLC)
Post Office Box 2869
Jackson, WY 83001

Current President or CEO
Progenex Holdings, LLC
Post Office Box 2869
Jackson, WY 83001

Current President or CEO
Progenex Holdings, LLC
Post Office Box 188
Kanosh, UT 84637

On April 29, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 29, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

April 29, 2016

Page 6

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

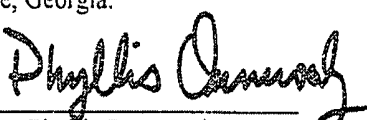
Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On April 29, 2016, 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 April 29, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

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

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"

WRAITH LAW

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

July 20, 2016

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

Dear Alleged Violator 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 Violator 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 Violator 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 Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Progenex Holdings, LLC, individually and doing business as Progenex

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:

**Progenex More Muscle Chocolate Peanut Butter Smash – Lead, Cadmium
Progenex Flow Island Punch - 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.

July 20, 2016

Page 2

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 July 20, 2013, 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 Violator violated Proposition 65 because it 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 Violator 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 Progenex Holdings, LLC, individually and doing business as Progenex and its 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 Progenex Holdings, LLC, individually and doing business as Progenex

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-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 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 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: July 20, 2016



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 July 20, 2016, 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
Progenex Holdings, LLC,
individually and doing
business as Progenex
41 East 400 North, #226
Logan, UT 84321

Current President or CEO
Progenex Holdings, LLC,
individually and doing
business as Progenex
40 West 1250 North 4C
Logan, UT 84321

Current President or CEO
Progenex Holdings, LLC,
individually and doing
business as Progenex
925 West 100 North, Suite E
North Salt Lake, UT 84054

Dwight Beckstrand
(Registered Agent for Progenex Holdings,
LLC)
Post Office Box 188
Kanosh, UT 84637

Current President or CEO
Progenex Holdings, LLC,
individually and doing
business as Progenex
Post Office Box 2869
Jackson, WY 83001

Corporate Direct, Inc.
(Registered Agent for Progenex Holdings,
LLC)
Post Office Box 2869
Jackson, WY 83001

Current President or CEO
Progenex Holdings, LLC,
individually and doing
business as Progenex
Post Office Box 188
Kanosh, UT 84637

Luke Adams
(Registered Agent for Progenex)
40 West 1250 North #4C
Logan, UT 84321

On July 20, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 20, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

July 20, 2016

Page 5

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
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3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On July 20, 2016, 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 July 20, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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, Suite 202
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, 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
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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
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210 West Temple Street, Suite 18000
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209 West Yosemite Avenue
Madera, CA 93637

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Roseville, CA 95678

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Quincy, CA 95971

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