

1 RICHARD M. FRANCO (CBN 170970)
2 LAW OFFICE OF RICHARD M. FRANCO
3 6500 Estates Drive
4 Oakland, CA 94611
5 Ph: 510-684-1022
6 Email: rick@rfrancolaw.com

FILED
ALAMEDA COUNTY

NOV 14 2017

CLERK OF THE SUPERIOR COURT
By [Signature]
Deputy

7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 Brian Stuart (SBN 207118)
10 brian.stuart@brianstuartlaw.com
11 Law Office of Brian T. Stuart
12 3900 Fir Tree Drive, Suite 2J
13 Riverside, CA 92505
14 Tel: (909) 563-8366
15 Fax: (951) 376-1389

16 Attorney for Defendant
17 NUVI GLOBAL CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

CASE NO. RG 17872274

20 Plaintiff,

**STIPULATED CONSENT
JUDGMENT**

21 vs.

Health & Safety Code § 25249.5 *et seq.*

22 NUVI GLOBAL CORPORATION, a
23 California corporation,

Action Filed: August 21, 2017

24 Defendant.

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On August 21, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
28 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
against NUVI GLOBAL CORPORATION ("NUVI GLOBAL"). In this action, ERC alleges

1 that a number of products manufactured, distributed, or sold by NUVI GLOBAL contain lead, a
2 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
3 consumers to this chemical at a level requiring a Proposition 65 warning. These products
4 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered
5 Products") are:

- 6 1. NuVi Stem Kaffee Latte
- 7 2. NuVi Stem Kaffee Mocha
- 8 3. NuVi Global TeloForte
- 9 4. NuVi Global Super NuVi Colon Detox System
 - 10 a. NuVi Global Super NuVi Colon Detox System #1
 - 11 b. NuVi Global Super NuVi Colon Detox System #2
 - 12 c. NuVi Global Super NuVi Colon Detox System #3
- 13 5. NuVi Global Super NuVi Metal Detox System

- 14 a. Nuvi Global Super NuVi Metal Detox System #1 Morning
15 Formula Detox System
- 16 b. Nuvi Global Super NuVi Metal Detox System #2 Evening Formula
17 Detox System

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

20 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
21 causes, helping safeguard the public from health hazards by reducing the use and misuse of
22 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
23 and encouraging corporate responsibility.

24 1.4 For purposes of this Consent Judgment, the Parties agree that NUVI GLOBAL is a
25 business entity that has employed ten or more persons at all times relevant to this action, and
26 qualifies as a "person in the course of business" within the meaning of Proposition 65. NUVI
27 GLOBAL manufactures, distributes, and/or sells the Covered Products.

28 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation

1 dated May 26, 2017 that was served on the California Attorney General, other public enforcers,
2 and NUVI GLOBAL ("Notice"). A true and correct copy of the 60-Day Notice dated May 26,
3 2017 is attached hereto as **Exhibit A** and is incorporated by reference. More than 60 days have
4 passed since the Notice was served on the Attorney General, public enforcers, and NUVI
5 GLOBAL and no designated governmental entity has filed a complaint against NUVI
6 GLOBAL with regard to the Covered Products or the alleged violations.

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

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

18 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
20 current or future legal proceeding unrelated to these proceedings.

21 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
22 a Judgment by this Court. The date by which NUVI GLOBAL must comply with the
23 injunctive relief provisions set forth in Section 3 shall be three months from the Effective Date
24 ("Compliance Date").

25 **2. JURISDICTION AND VENUE**

26 For purposes of this Consent Judgment and any further court action that may become
27 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
28 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction

1 over NUVI GLOBAL as to the acts alleged in the Complaint, that venue is proper in Alameda
2 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
3 resolution of all claims up through and including the Compliance Date which were or could have
4 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

6 **3.1** Beginning on the Compliance Date, NUVI GLOBAL shall be permanently
7 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
8 California", or directly selling in the State of California, any Covered Products which exposes a
9 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
10 meets the warning requirements under Section 3.2.

11 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
12 of California" shall mean to directly ship a Covered Product into California for sale in
13 California or to sell a Covered Product to a distributor that NUVI GLOBAL knows or has
14 reason to know will sell the Covered Product in California.

15 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
16 Level" shall be measured in micrograms, and shall be calculated using the following formula:
17 micrograms of lead per gram of product, multiplied by grams of product per serving of the
18 product (using the largest serving size appearing on the product label), multiplied by servings
19 of the product per day (using the largest number of servings in a recommended dosage
20 appearing on the product label), which equals micrograms of lead exposure per day. If no
21 recommended daily serving size is provided on the label, then the daily serving size shall equal
22 one.

23 **3.2 Clear and Reasonable Warnings**

24 If NUVI GLOBAL is required to provide a warning pursuant to Section 3.1, the following
25 warning must be utilized ("Warning"):

26 **WARNING:** Consuming this product can expose you to chemicals including lead which is
27 [are] known to the State of California to cause [cancer and] birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

28 NUVI GLOBAL shall use the phrase "cancer and" in the Warning only if the "Daily Lead

1 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
2 control methodology set forth in Section 3.4.

3 The Warning shall be securely affixed to or printed upon the container or label of each
4 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall
5 appear on the checkout page when a California delivery address is indicated for any purchase of
6 any Covered Product. An asterisk or other identifying method must be utilized to identify which
7 products on the checkout page are subject to the Warning.

8 The Warning shall be at least the same size as the largest of any other health or safety
9 warnings also appearing on its website or on the label or container of NUVI GLOBAL’s product
10 packaging and the word “WARNING” shall be in all capital letters and in bold print. No
11 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
12 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
13 statements may accompany the Warning that state or imply that the source of the listed chemical
14 has an impact on or results in a less harmful effect of the listed chemical.

15 NUVI GLOBAL must display the above Warning with such conspicuousness, as compared
16 with other words, statements, design of the label, container, or on its website, as applicable, to
17 render the Warning likely to be read and understood by an ordinary individual under customary
18 conditions of purchase or use of the product.

19 3.3 Reformulated Covered Products

20 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no
21 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
22 described in Section 3.4.

23 3.4 Testing and Quality Control Methodology

24 3.4.1 Beginning within one year of the Compliance Date, NUVI GLOBAL
25 shall arrange for lead testing of the Covered Products at least once a year for a minimum of five
26 consecutive years by arranging for testing of five randomly selected samples of each of the
27 Covered Products, in the form intended for sale to the end-user, which NUVI GLOBAL intends
28 to sell or is manufacturing for sale in California, directly selling to a consumer in California or

1 "Distributing into the State of California." If tests conducted pursuant to this Section
2 demonstrate that no Warning is required for a Covered Product during each of five consecutive
3 years, then the testing requirements of this Section will no longer be required as to that Covered
4 Product. However, if during or after the five-year testing period, NUVI GLOBAL changes
5 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
6 Products, NUVI GLOBAL shall test that Covered Product annually for at least four (4)
7 consecutive years after such change is made.

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

11 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
12 laboratory method that complies with the performance and quality control factors appropriate
13 for the method used, including limit of detection, qualification, accuracy, and precision that

14 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
15 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
16 method subsequently agreed to in writing by the Parties and approved by the Court through
17 entry of a modified consent judgment.

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

22 **3.4.5** Nothing in this Consent Judgment shall limit NUVI GLOBAL's ability
23 to conduct, or require that others conduct, additional testing of the Covered Products, including
24 the raw materials used in their manufacture.

25 **3.4.6** Within thirty (30) days of ERC's written request, NUVI GLOBAL shall
26 deliver lab reports obtained pursuant to Section 3.4 to ERC. NUVI GLOBAL shall retain all
27 test results and documentation for a period of five years from the date of each test.

28

1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
3 attorney's fees, and costs, NUVI GLOBAL shall make a total payment of \$90,000 ("Total
4 Settlement Amount") to ERC, to be paid in six (6) monthly payments of \$15,000 each. The
5 initial \$15,000 payment shall be paid to ERC within 5 days of the Effective Date ("Due Date").
6 Subsequent payments shall be due as follows: \$15,000 shall be paid within 35 days of the Due
7 Date, \$15,000 shall be paid within 65 days of the Due Date, \$15,000 shall be paid within 95
8 days of the Due Date, \$15,000 shall be paid within 125 days of the Due Date, and \$15,000 shall
9 be paid within 155 days of the Due Date, NUVI GLOBAL shall make these payments by wire
10 transfer to ERC's escrow account, for which ERC will give NUVI GLOBAL the necessary
11 account information. The Total Settlement Amount shall be apportioned as follows:

12 **4.2** \$40,427.44 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$30,320.58) of the civil penalty to
14 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$10,106.86) of the civil
17 penalty.

18 **4.3** \$3,440.19 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **4.4** \$30,320.53 shall be distributed to ERC as an Additional Settlement Payment
21 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
23 caused by NUVI GLOBAL in this matter. These activities are detailed below and support ERC's
24 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
25 supplement products in California. ERC's activities have had, and will continue to have, a direct
26 and primary effect within the State of California because California consumers will be benefitted
27 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
28

1 providing clear and reasonable warnings to California consumers prior to ingestion of the
2 products.

3 Based on a review of past years' actual budgets, ERC is providing the following list of
4 activities ERC engages in to protect California consumers through Proposition 65 citizen
5 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
6 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
7 supplement products that may contain lead and are sold to California consumers. This work
8 includes continued monitoring and enforcement of past consent judgments and settlements to
9 ensure companies are in compliance with their obligations thereunder, with a specific focus on
10 those judgments and settlements concerning lead. This work also includes investigation of new
11 companies that ERC does not obtain any recovery through settlement or judgment; (2)
12 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
13 Compliance Program by acquiring products from companies, developing and maintaining a case-
14 file, testing products from these companies, providing the test results and supporting
15 documentation to the companies, and offering guidance in warning or implementing a self-
16 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
17 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
18 products that reach California consumers by providing access to free testing for lead in dietary
19 supplement products (Products submitted to the program are screened for ingredients which are
20 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
21 qualified laboratory for testing, and the results shared with the consumer that submitted the
22 product).

23 ERC shall be fully accountable in that it will maintain adequate records to document and
24 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
25 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
26 shall provide the Attorney General, within thirty days of any request, copies of documentation
27 demonstrating how such funds have been spent.
28

1 4.4.1 \$5,985.00 shall be distributed to the Law Office of Richard M. Franco as
2 reimbursement of ERC's attorney's fees, while \$9,826.84 shall be distributed to ERC for its in-
3 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
4 costs.

5 4.6 In the event that NUVI GLOBAL fails to remit any payment pursuant to Section
6 4.1 on or before the relevant due date, NUVI GLOBAL shall be deemed to be in material
7 breach of its obligations under this Consent Judgment. ERC shall provide written notice of the
8 delinquency to NUVI GLOBAL via electronic mail. If NUVI GLOBAL fails to deliver the
9 delinquent payment within five (5) days from the written notice, the Total Settlement Amount
10 shall accrue interest at the statutory judgment interest rate provided in California Code of Civil
11 Procedure section 685.010. Additionally, NUVI GLOBAL agrees to pay ERC's reasonable
12 attorney's fees and costs for any efforts to collect the payments due under this Consent
13 Judgment.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

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

18 5.2 If NUVI GLOBAL seeks to modify this Consent Judgment under Section 5.1,
19 then NUVI GLOBAL must provide written notice to ERC of its intent ("Notice of Intent"). If
20 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
21 ERC must provide written notice to NUVI GLOBAL within thirty (30) days of receiving the
22 Notice of Intent. If ERC notifies NUVI GLOBAL in a timely manner of ERC's intent to meet
23 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
24 Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its
25 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
26 proposed modification, ERC shall provide to NUVI GLOBAL a written basis for its position.
27 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
28

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

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

8 **5.4** Where the meet-and-confer process does not lead to a joint motion or
9 application in support of a modification of the Consent Judgment, then either Party may seek
10 judicial relief on its own. In any such contested court proceeding, ERC may seek any
11 attorney's fees and costs incurred in opposing the motion pursuant to California Code of Civil
12 Procedure section 1021.5.

13 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**

14 **JUDGMENT**

15 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
16 this Consent Judgment.

17 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
18 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
19 inform NUVI GLOBAL in a reasonably prompt manner of its test results, including information
20 sufficient to permit NUVI GLOBAL to identify the Covered Products at issue. NUVI
21 GLOBAL shall, within thirty (30) days following such notice, provide ERC with testing
22 information, from an independent third-party laboratory meeting the requirements of Sections
23 3.4.3 and 3.4.4, demonstrating NUVI GLOBAL's compliance with the Consent Judgment, if
24 warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further
25 legal action.

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
2 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
3 application to any Covered Product which is distributed or sold exclusively outside the State of
4 California and which is not used by California consumers.

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

6 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
7 on behalf of itself and in the public interest, and NUVI GLOBAL and its respective officers,
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
9 franchisees, licensees, customers (not including private label customers of NUVI GLOBAL),
10 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
11 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
12 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
13 hereby fully releases and discharges the Released Parties from any and all claims, actions,

14 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
15 asserted, or that could have been asserted from the handling, use, or consumption of the
16 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
17 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
18 lead up to and including the Compliance Date.

19 **8.2** ERC on its own behalf only, and NUVI GLOBAL on its own behalf only,
20 further waive and release any and all claims they may have against each other for all actions or
21 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
22 65 in connection with the Notice and Complaint up through and including the Compliance
23 Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek
24 to enforce the terms of this Consent Judgment.

25 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
27 discovered. ERC on behalf of itself only, and NUVI GLOBAL on behalf of itself only,
28 acknowledge that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.
2 ERC and NUVI GLOBAL acknowledge that the claims released in Sections 8.1 and 8.2 above
3 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
4 any such unknown claims. California Civil Code section 1542 reads as follows:

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

8 ERC on behalf of itself only, and NUVI GLOBAL on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

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

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

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

20 **10. GOVERNING LAW**

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

23 **11. PROVISION OF NOTICE**

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

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

28 Chris Heptinstall, Executive Director, Environmental Research Center

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

5 With a copy to:
6 RICHARD M. FRANCO
7 LAW OFFICE OF RICHARD M. FRANCO
8 6500 Estates Drive
9 Oakland, CA 94611
10 Ph: 510-684-1022
11 Email: rick@rfrancolaw.com

12
13 **NUVI GLOBAL CORPORATION**
14 *Yessica Hernandez*
15 *Nuvi Global*
16 *8423 Rochester Ave #101*
17 *Rancho Cucamonga, CA 91730*

18 With a copy to:
19 Brian Stuart (SBN-207118)
20 brian.stuart@brianstuartlaw.com
21 Law Office of Brian T. Stuart
22 3900 Fir Tree Drive, Suite 2J
23 Riverside, CA 92505
24 Tel: (909) 563-8366
25 Fax: (951) 376-1389

18 12. COURT APPROVAL

19 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
20 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
21 Consent Judgment.

22 12.2 If the California Attorney General objects to any term in this Consent Judgment,
23 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
24 prior to the hearing on the motion.

25 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
26 void and have no force or effect.

27 13. EXECUTION AND COUNTERPARTS

28 This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
2 as the original signature.

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

18 ERC may, by motion or order to show cause before the Superior Court of Alameda
19 County, enforce the terms and conditions contained in this Consent Judgment. In any action
20 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
21 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
22 To the extent the failure to comply with the Consent Judgment constitutes a violation of
23 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
24 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
25 law for failure to comply with Proposition 65 or other laws.

26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter herein, and any and all

1 prior discussions, negotiations, commitments, and understandings related hereto. No
2 representations, oral or otherwise, express or implied, other than those contained herein have
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
4 herein, shall be deemed to exist or to bind any Party.

5 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

7 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
8 **CONSENT JUDGMENT**

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

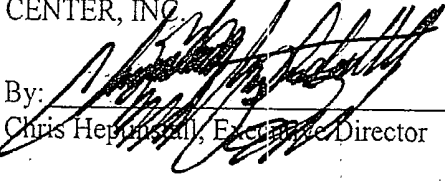
12 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
13 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
14 been diligently prosecuted, and that the public interest is served by such settlement; and

15 (2) Make the findings pursuant to California Health and Safety Code section
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

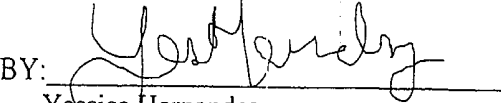
18
19 Dated: 8/21, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepburn, Executive Director

22
23 Dated: 8/22, 2017

NUVI GLOBAL CORPORATION

24
25 BY: 
26 Jessica Hernandez
27 Director
28

1 APPROVED AS TO FORM:

2 Dated: August 21, 2017

LAW OFFICE OF RICHARD M. FRANCO

3
4 By: 

5 Richard M. Franco
6 Attorney for Plaintiff Environmental
7 Research Center, Inc.

7 Dated: Aug 22, 2017

LAW OFFICE OF BRIAN T. STUART

8
9 By: 

10 Brian T. Stuart
11 Attorney for Defendant Nuvi Global
12 Corporation

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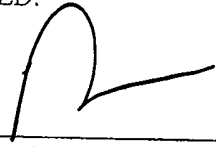
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 11/14, 2017



Judge of the Superior Court

Robert D. McGinnis

EXHIBIT A

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LAW OFFICE OF RICHARD M. FRANCO

**6500 ESTATES DRIVE
OAKLAND, CA 94611
510.684.1022
RICK@RFRANCOLAW.COM**

VIA CERTIFIED MAIL

Current CEO or President
NuVi Global Corporation
8423 Rochester Avenue, Suite 101
Rancho Cucamonga, CA 91730

Yessica Hernandez Lemus
(NuVi Global Corporation's Registered
Agent for Service of Process)
8423 Rochester Avenue, Suite 101
Rancho Cucamonga, CA 91730

VIA ELECTRONIC MAIL

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

VIA ELECTRONIC MAIL

Paul E. Zellerbach, District Attorney
Riverside County
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

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

May 26, 2017

Page 2

VIA ELECTRONIC MAIL

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

VIA ELECTRONIC MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

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

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

Dear Addressees:

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

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

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

NuVi Global Corporation

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

1. **NuVi Stem Kaffee Latte - Lead**
2. **NuVi Stem Kaffee Mocha - Lead**
3. **NuVi Global TeloForte – Lead**
4. **NuVi Global Super NuVi Colon Detox System - Lead**
 - a. **NuVi Global Super NuVi Colon Detox System #1**
 - b. **NuVi Global Super NuVi Colon Detox System #2**
 - c. **NuVi Global Super NuVi Colon Detox System #3**
5. **NuVi Global Super NuVi Metal Detox System - Lead**
 - a. **Nuvi Global Super NuVi Metal Detox System #1 Morning Formula Detox System**
 - b. **Nuvi Global Super NuVi Metal Detox System #2 Evening Formula Detox System**

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

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since May 26, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

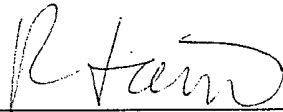
May 26, 2017

Page 4

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to NuVi Global Corporation and its Registered Agent for Service of Process only)

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

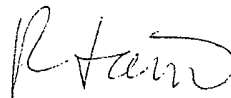
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by NuVi Global Corporation**

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 26, 2017



Rick Franco

CERTIFICATE OF SERVICE PURSUANT 27 CCR § 25903

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 and over the age of 18 years of age. 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 May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
NuVi Global Corporation
8423 Rochester Avenue, Suite 101
Rancho Cucamonga, CA 91730

Yessica Hernandez Lemus
(NuVi Global Corporation's Registered
Agent for Service of Process)
8423 Rochester Avenue, Suite 101
Rancho Cucamonga, CA 91730

On May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below:

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

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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

May 26, 2017

Page 7

Paul E. Zellerbach, District Attorney
Riverside County
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

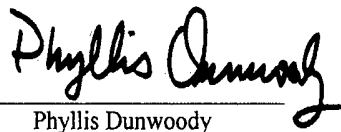
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Tulare County
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Visalia, CA 95370
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Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

On May 26, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 May 26, 2017, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

May 26, 2017

Page 8

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1200 San Diego, CA 92101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230		District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	