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Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, INC., a California non-profit corporation **Plaintiff,** **vs.** **NEUROBIOLOGIX LLC and DOES 1-100** **Defendants.**	CASE NO. RG18904736 **STIPULATED CONSENT JUDGMENT** Health & Safety Code § 25249.5 *et seq.* Action Filed: May 11, 2018 Trial Date: None set

1. INTRODUCTION

1.1 On May 11, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against Neurobiologix LLC ("Neurobiologix") and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by Neurobiologix contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered Product" or collectively as "Covered Products") are: (1) Neuro Biologix Super Greens Delicious Chocolate Flavor!; (2) Neuro

Biologix Super Greens Delicious Berry Flavor!; (3) Neuro Biologix Neuro Complete for Women; (4) Neuro Biologix Exclusive Formula Mitochondrial Restore; (5) Neuro Biologix Exclusive Formula Hist Block DAO; and (6) Acid-2-Alkaline.

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

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

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

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated February 2, 2018 that was served on the California Attorney General, other public enforcers, and Neurobiologix ("Notice"). A true and correct copy of the 60-Day Notice dated February 2, 2018 is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and Neurobiologix and no designated governmental entity has filed a complaint against Neurobiologix with regard to the Covered Products or the alleged violations.

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

1.7 The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed as an admission by any of the Parties or by any of their respective officers,

directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law.

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

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

2. JURISDICTION AND VENUE

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

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning on the Effective Date, Neurobiologix shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

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

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula:

micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

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

> **WARNING:** Consuming this product can expose you to chemicals including lead which is [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.

Neurobiologix shall use the phrase "cancer and" in the Warning if Neurobiologix has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Neurobiologix has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning. In no event shall any internet or website Warning be contained in or made through a link.

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

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

3.3 Reformulated Covered Products

A Reformulated Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4 and which Neurobiologix intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or Distributing into the State of California.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, Neurobiologix shall arrange for lead testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of five randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Neurobiologix intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, Neurobiologix changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, Neurobiologix shall test that Covered Product which Neurobiologix intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or Distributing into the State of California on an annual basis for at least three (3) consecutive years after such change is made.

3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest lead detection result of the five (5) randomly selected samples of the Covered Products will be controlling. All testing pursuant to this Consent Judgment shall be performed using a laboratory

method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

3.4.4 Nothing in this Consent Judgment shall limit Neurobiologix's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

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

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, Neurobiologix shall make a total payment of $39,000.00 ("Total Settlement Amount") in two consecutive equal monthly payments, according to the following payment schedule ("Due Dates"):

- Payment 1 – $19,500.00 within 5 days of the Effective Date
- Payment 2 – $19,500.00 within 35 days of the Effective Date

Neurobiologix shall make these payments by wire transfer to ERC's account, for which ERC will give Neurobiologix the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 $1,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% ($750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe

Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% ($250.00) of the civil penalty.

4.3 $6,739.85 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $1,489.60 shall be distributed to Michael Freund as reimbursement of ERC's attorney's fees, $7,330.20 shall be distributed to Ryan Hoffman as reimbursement of ERC's attorney's fees, while $22,440.35 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.5 In the event that Neurobiologix fails to remit a payment pursuant to Section 4.1 of this Consent Judgment on or before the respective Due Date, Neurobiologix shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the delinquency to Neurobiologix via electronic mail. If Neurobiologix fails to deliver the delinquent payment within five (5) business days from the written notice, the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010. Additionally, Neurobiologix agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this Consent Judgment.

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified only as to injunctive terms (i) by written stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a modified consent judgment. ERC will not seek to modify this Consent Judgment to make its injunctive provisions concerning Clear and Reasonable Warnings more onerous on Neurobiologix than as is provided in Section 3.2. Modification or revision by voter initiative, case law, statute or regulation of Proposition 65 and/or the regulations promulgated pursuant thereto that has the effect of eliminating or substantially reducing the duties of manufacturers of

dietary supplements similar to the Covered Products to warn consumers under Proposition 65 shall be grounds for seeking modification of this Consent Judgment.

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

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

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

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

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

6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

inform Neurobiologix in a reasonably prompt manner of its test results, including information sufficient to permit Neurobiologix to identify the Covered Products at issue. Neurobiologix shall, within thirty (30) days following such notice, provide ERC with testing information, from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, as may exist consistent with the provisions of this Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action. Nothing in this Section 6.2 shall obligate Neurobiologix to engage in testing or create any right in ERC with regard to a Covered Product to which this Consent Judgment does not apply pursuant to Section 7 of this Consent Judgment.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment may apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to the sale or distribution of any Covered Product outside the State of California unless such sale or distribution constitutes "Distributing into the State of California" as that term is defined in Section 3.1.1 above. .

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and Neurobiologix and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Neurobiologix), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and their predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, consumption of or

exposure to the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

8.2 ERC on its own behalf only, and Neurobiologix on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice and Complaint with respect to the Covered Products up through and including the Effective Date... ERC on its own behalf only further releases, waives and forever discharges Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted, whether known or unknown, suspected or unsuspected, from the handling, use, or consumption of, or actual or alleged exposure to lead in the Covered Products.Nothing in Section 8, including, without limitation, the foregoing releases, shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment if Neurobiologix is in violation thereof. Complete and continuous compliance with the terms of this Consent Judment resolves any issue now, in the past, and in the future, concerning the Released Parties with respect to the Covered Products.

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

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

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

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

8.6 If ERC seeks to enforce this Consent Judgment claiming a violation thereof, or if another enforcer alleges violation of Proposition 65 or other laws, Neurobiologix may assert any and all defenses that are available, including *res judicata* or collateral estoppel effect of this Consent Judgment.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090

Email: chris_erc501c3@yahoo.com

With a copy to:
Michael Freund
Ryan Hoffman
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR NEUROBIOLOGIX LLC:

Kara Stewart, CEO
13376 North Highway 183
Suite 126
Austin, TX 78750

With a copies to:
Racy L. Haddad
Haddad Legal Group, P.C.
1250 S. Capital of Texas Hwy
Building One, Suite 125
West Lake Hills, TX 78746
Telephone: (512) 347-7500
Facsimile: (512) 347-7501

Steven L. Feldman
Goldfarb, Sturman & Averbach
15760 Ventura Blvd., Suite 1900
Encino, CA 91436
sfeldman@gsalaw.com
Telephone: (818) 990-4414
Facsimile : (818) 905-7173

12. COURT APPROVAL

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

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

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

13. EXECUTION AND COUNTERPARTS

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

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and 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.

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

16. ENFORCEMENT

ERC may, by motion or order to show cause before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

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

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

(2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4) that the warnings required by the Consent Judgment comply with the Safe Drinking Water and Toxic Enforcement Act of 1986 as codified in Chapter 6.6, Division 20 of the Health and Safety Code, the award of attorney's fees is reasonable under California law and the penalty amount is reasonable based on the criteria set forth paragraph (2), subdivision (b) of California Health and Safety Code section 25249.7, and

(3) Approve the Settlement and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 8/3/, 2018

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: Aug 1st, 2018

NEUROBIOLOGIX LLC

_____
By: Kara Stewart
Its: CEO

APPROVED AS TO FORM:

Dated: 8/3, 2018

MICHAEL FREUND & ASSOCIATES

By: _____
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental Research Center, Inc.

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: October 19, 2018

_____
Judge of the Superior Court

Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq. **Ryan Hoffman**, Esq.

February 2, 2018

NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

Neurobiologix 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:

1. **Neuro Biologix Super Greens Delicious Chocolate Flavor! - Lead**
2. **Neuro Biologix Super Greens Delicious Berry Flavor! - Lead**
3. **Neuro Biologix Neuro Complete for Women - Lead**
4. **Neuro Biologix Exclusive Formula Mitochondrial Restore - Lead**
5. **Neuro Biologix Exclusive Formula Hist Block DAO – Lead**
6. **Acid-2-Alkaline – 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.

Exhibit A

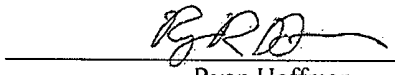
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 2, 2015, 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.

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

Sincerely,



Ryan Hoffman

Attachments
Certificate of Merit
Certificate of Service
OEHHA Summary (to Neurobiologix LLC 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 Neurobiologix LLC

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: February 2, 2018

Ryan Hoffman

CERTIFICATE OF SERVICE PURSUANT TO 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 February 2, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Neurobiologix LLC
9225 West Parmer Lane, Suite 106
Austin, TX 78717

Current CEO or President
Neurobiologix LLC
13376 North Highway 183, Suite 126
Austin, TX 78750

Kara Stewart
(Neurobiologix LLC's Registered Agent for
Service of Process)
1999 Bryan Street, Suite 900
Dallas, TX 75201

On February 2, 2018 between 8:00 a.m. and 5:00 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 February 2, 2018 between 8:00 a.m. and 5:00 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

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
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1127 First Street, Suite C
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Paul E. Zellerbach, District Attorney
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Anne Marie Schubert, District Attorney
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901 G Street
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Gregory Alker, Assistant District Attorney
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gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
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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
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San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

Phillip J. Cline, District Attorney
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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 February 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, 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 First Class Mail.

Executed on February 2, 2018, 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
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
P.O. Drawer D
Independence, CA 93526

District Attorney, Kern County
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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
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

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Madera, CA 93637

District Attorney, Marin County
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San Rafael, CA 94903

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Mariposa, CA 95338

District Attorney, Mendocino County
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Ukiah, CA 95482

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Merced, CA 95340

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204 S Court Street, Room 202
Alturas, CA 96101-4020

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Bridgeport, CA 93517

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

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Santa Ana, CA 92701

District Attorney, Placer County
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Roseville, CA 95678

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Quincy, CA 95971

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Hollister, CA 95023

District Attorney,San Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Mateo County
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Santa Barbara, CA 93101

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Redding, CA 96001

District Attorney, Sierra County
100 Courthouse Square, 2nd Floor
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Yreka, CA 96097

District Attorney, Solano County
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Fairfield, CA 94533

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

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Yuba City, CA 95991

District Attorney, Tehama County
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Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne County
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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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: http://oehha.ca.gov/prop65/law/P65law72003.html. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.[1] These implementing regulations are available online at: http://oehha.ca.gov/prop65/law/P65Regs.html.

WHAT DOES PROPOSITION 65 REQUIRE?

[1] All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: http://www.oehha.ca.gov/prop65/law/index.html.

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (http://www.oehha.ca.gov/prop65/law/index.html) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant[2] it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for

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[2] See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to $2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: http://oehha.ca.gov/prop65/law/p65law72003.html.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG18 904736
Case name: Environmental Research Center Inc. VS Neurobiologix LLC

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document, **Stipulated Consent Judgment** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: October 31, 2018

Chad Finke, Executive Officer/Clerk of the Superior Court

By: _____
Maya Walker
Deputy Clerk

Michael Freund & Associates
Attn: Ryan Hoffman
1919 Addison Street, Suite 105
Berkeley, CA 94704

GOLDFARB, STURMAN & AVERBACH
Attn: Steven Feldman or Steven Crane
15760 Ventura Blvd., Suite 1900
Encino, CA 91436