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CLERK OF THE SUPERIOR COURT
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16 PRIMAL NUTRITION, LLC; PRIMAL NUTRITION, INC.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF ALAMEDA**

19 **ENVIRONMENTAL RESEARCH**
20 **CENTER, INC., a California non-profit**
21 **corporation**

22 **Plaintiff,**

23 **vs.**

24 **PRIMAL NUTRITION, LLC; PRIMAL**
25 **NUTRITION, INC.; and DOES 1-100**

26 **Defendants.**

CASE NO. RG18907843

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 6, 2018

Trial Date: None set

27 **1. INTRODUCTION**

28 **1.1** On June 6, 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

1 65”), against Primal Nutrition, LLC and Primal Nutrition, Inc. (collectively, “Primal Nutrition”),
2 and Does 1-100. In this action, ERC alleges that a number of products manufactured,
3 distributed, or sold by Primal Nutrition contain lead, a chemical listed under Proposition 65 as a
4 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a
5 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
6 Product” or collectively as “Covered Products”) are all sizes and all forms of packaging and
7 labeling of:

- 8 (1) Primal Damage Control Micronutrient SuperFormula,
- 9 (2) Primal Master Formula,
- 10 (3) Primal Kitchen Chocolate Coconut Primal Fuel Low-Carb Meal Replacement Shake,
- 11 and
- 12 (4) Primal Kitchen Collagen Fuel Chocolate Coconut Grass-Fed Collagen Peptide Drink
- 13 Mix.

14 Covered Products shall include those products with minor variations in formulation so long as
15 they have the same internal UPC codes as the Covered Products. Primal Nutrition shall not
16 change the internal UPC Codes for the Covered Products during the term of this Agreement, but
17 Primal Nutrition may terminate any given UPC Code if it elects to terminate a Covered Product.

18 **1.2** ERC and Primal Nutrition 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 each defendant is a
25 business entity each of which has employed ten or more persons at times relevant to this action,
26 and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
27 Primal Nutrition has either manufactured, distributed, and/or sold the Covered Products at times
28 material to this action.

1 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
2 dated March 27, 2018 that was served on the California Attorney General, other public
3 enforcers, and Primal Nutrition ("Notice"). A true and correct copy of the 60-Day Notice dated
4 March 27, 2018 is attached hereto as **Exhibit A** and is incorporated herein by reference. More
5 than 60 days have passed since the Notice was served on the Attorney General, public
6 enforcers, and Primal Nutrition and no designated governmental entity has filed a complaint
7 against Primal Nutrition with regard to the Covered Products or the alleged violations.

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

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

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

22 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
23 notice on Primal Nutrition that it has been entered as a Judgment by this Court.

24 **2. JURISDICTION AND VENUE**

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

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

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

6 **3.1** Beginning on the Effective Date, Primal Nutrition shall be permanently enjoined
7 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 expose 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. Notwithstanding the foregoing, so long as
11 Primal Nutrition can document the date of manufacture of a Covered Product, Covered
12 Products manufactured prior to the Effective Date may be distributed or sold without a
13 "Warning" (defined below) by any person after the Effective Date without violation of this
14 Consent Judgment.

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

19 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
20 Level" shall be measured in micrograms, and shall be calculated using the following formula:
21 micrograms of lead per gram of product, multiplied by grams of product per serving of the
22 product (using the largest serving size recommended on the product label), multiplied by
23 servings of the product per day (using the largest number of recommended daily servings
24 appearing on the label for a single day of consumption), *minus* the "Naturally Occurring Lead"
25 (defined below), which equals micrograms of lead exposure per day. If the label contains no
26 recommended daily servings, then the number of recommended daily servings shall be one as
27 defined by the single serving on the nutrition fact panel or supplement fact panel on the label.
28

1 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
2 Primal Nutrition shall be allowed to deduct the amount of lead which is deemed to be Naturally
3 Occurring Lead in any ingredient listed in **Table 1** ("Lead Ingredient") that is contained in that
4 Covered Product under the following conditions: (a) Primal Nutrition itself or from its Lead
5 Ingredient supplier shall obtain either (i) a valid test result showing lead is present in the Lead
6 Ingredient at a specific concentration or in a range; or (ii) a certificate of analysis or certificate of
7 compliance that shows lead is present in the Lead Ingredient at a specific concentration or in a
8 range; and (b) Primal Nutrition shall obtain the documentation in Section 3.1.3(a) (i) or (ii) for at
9 least two delivered lots of a Lead Ingredient listed in **Table 1**, if up to four (4) lots of that Lead
10 Ingredient are delivered within twelve (12) months of the Effective Date, and documentation for
11 at least three (3) lots of a Lead Ingredient if up to eight (8) lots of that Lead Ingredient are
12 delivered within twelve (12) months of the Effective Date, and documentation for at least four
13 (4) lots of a Lead Ingredient if nine (9) or more lots of that Lead Ingredient are delivered within
14 twelve (12) months of the Effective Date; and (c) Primal Nutrition shall document the total
15 amount (in grams) of each Lead Ingredient contained in the Covered Product. If the
16 documentation obtained pursuant to Section 3.1.3(a) and (b) documents the presence of lead in
17 any Lead Ingredient in **Table 1**, Primal Nutrition shall be entitled to deduct the amount of the
18 Naturally Occurring Lead for that Lead Ingredient, as listed in **Table 1**. If the Covered Product
19 does not contain a Lead Ingredient listed in **Table 1**, Primal Nutrition shall not be entitled to a
20 deduction for the Naturally Occurring Lead in **Table 1** for that Covered Product.

21 To deduct the Naturally Occurring Lead in any Covered Product for purposes of
22 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this
23 Section 3.1.4, Primal Nutrition shall provide to ERC, within thirty (30) days after the first
24 anniversary of the Effective Date, the documentation required under Section 3.1.3(a)-(c).
25 Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if Primal
26 Nutrition deducts Naturally Occurring Lead in a Lead Ingredient in calculating the Daily Lead
27 Exposure Level, Primal Nutrition shall provide to ERC, within thirty (30) days after each such
28

1 anniversary date, the documentation for each Lead Ingredient required under Section 3.1.3(a)-(c)
2 for each such applicable twelve (12) month period.

3 **TABLE 1**

INGREDIENT	NATURALLY OCCURRING AMOUNTS OF LEAD
Calcium (Elemental)	0.8 micrograms/gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Cocoa-powder	1.0 micrograms/gram
Chocolate Liquor	1.0 micrograms/gram
Cocoa Butter	0.1 micrograms/gram

11
12 **3.2 Clear and Reasonable Warnings**

13 If Primal Nutrition is required to provide a warning pursuant to Section 3.1, the following
14 warning must be utilized (“Warning”):

15 **WARNING:** Consuming this product can expose you to chemicals including lead which is
16 [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.

17 Primal Nutrition shall use the phrase “cancer and” in the Warning if Primal Nutrition has
18 documented or is in possession of representative test results indicating that the “Daily Lead
19 Exposure Level” is greater than fifteen (15) micrograms of lead as determined pursuant to the
20 quality control methodology set forth in Section 3.4.

21 The Warning shall be securely affixed to or printed upon the container or label of each
22 Covered Product and must be set off from other surrounding information and if on the label it
23 must be enclosed in a box. The Warning on the Covered Product label shall be at least the same
24 size as other warnings on the label so long as the Warning remains clearly visible and readable to
25 the consumer. In addition, for any Covered Product sold over the internet by or through Primal
26 Nutrition’s proprietary website, the Warning either shall (a) appear on the product display page
27 on which the Covered Product is identified (but may not be provided via a hyperlink on that
28 product display page) or (b) appear to the purchaser, not via a hyperlink, during the checkout

1 process and prior to completion thereof when a California delivery address is indicated for any
2 purchase of any Covered Product. An asterisk or other method of identifying the existence of the
3 Warning must be utilized so the purchaser may readily identify the specific Covered Product(s)
4 subject to the Warning.

5 For Covered Products sold over the internet by or through Primal Nutrition's own website,
6 the Warning shall be at least the same size as other health or safety warnings also appearing on the
7 product display page on Primal Nutrition's website. For all Warnings, the word "WARNING"
8 shall be in all capital letters and in bold print. Statements supplemental to the Warning which are
9 immediately proximate thereto are allowed only to the extent they identify the source of the
10 exposure or provide information on how consumers of the Covered Products may avoid or reduce
11 exposure to the identified chemical or chemicals. Except as set forth in the immediately preceding
12 sentence, no statements shall appear adjacent to the Warning and, specifically, no statements
13 adjacent to the Warning may state that the source of the listed chemical renders the listed chemical
14 non-harmful or healthful.

15 Primal Nutrition must display the above Warning with such conspicuousness, as compared
16 with other words, statements or designs on the label or container, or on its website, if 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 a Covered Product for which the "Daily Lead
21 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality
22 control methodology described in Section 3.4 and for which the Uniform Product Code (UPC)
23 remains the same.

24 **3.4 Testing and Quality Control Methodology**

25 **3.4.1** Beginning within one (1) year of the Effective Date, Primal Nutrition
26 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
27 three (3) consecutive years by arranging for testing of three (3) randomly selected samples from
28 different lots of each of the Covered Products, in the form intended for sale to the end-user,

1 which Primal Nutrition intends to sell or is manufacturing for sale in California, directly selling
2 to a consumer in California, or "Distributing into the State of California." If three (3) or more
3 lots of a given Covered Product are not available at the time of such sampling, then the samples
4 shall be selected from such number of lots as are available. If tests conducted pursuant to this
5 Section demonstrate that no Warning is required for a Covered Product during each of three (3)
6 consecutive years, then the testing requirements of this Section will no longer be required as to
7 that Covered Product; provided, however, that Primal Nutrition shall not be required under this
8 Consent Judgment to test any Covered Product for more than four (4) consecutive years from
9 the Effective Date. Nothing in this Section 3.4.1 shall diminish Primal Nutrition's ongoing
10 obligation to provide an accurate Warning when required hereunder.

11 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the
12 average (arithmetic mean) of the lead detection results of the three (3) randomly selected
13 samples of the Covered Products will be controlling for all purposes under this Consent
14 Judgment.

15 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
16 laboratory method that complies with the performance and quality control factors appropriate
17 for the method used, including limit of detection, qualification, accuracy, and precision that
18 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
19 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

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

27 **3.4.6** Within thirty (30) days of ERC's written request, Primal Nutrition shall
28 deliver lab reports obtained pursuant to Section 3.4 to ERC. Primal Nutrition shall retain all test

1 results and documentation for a period of three (3) years from the date of each test. ERC shall
2 not request such lab reports more than once annually, absent good cause to do so.

3 **3.4.7** No testing shall be required for a Covered Product which includes a
4 Warning compliant with Section 3.2 on the label, container, or on Primal Nutrition's
5 proprietary website or for a Covered Product that is no longer manufactured, a Covered Product
6 which is not sold in California, or, with respect to internet sales by and through Primal
7 Nutrition's own website, a Covered Product that is not shipped to a California shipping address,
8 or for a Covered Product that is merely transshipped through California (i.e., remains
9 unopened) to a retailer or distributor outside of California that does not sell that particular
10 Covered Product to persons inside of California.

11 **4. SETTLEMENT PAYMENT**

12 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
13 attorney's fees, and costs, Primal Nutrition shall make a total payment of \$62,500.00 ("Total
14 Settlement Amount") to ERC within five (5) business days of the Effective Date ("Due Date").
15 Primal Nutrition shall make this payment by wire transfer to ERC's account, for which ERC
16 will give Primal Nutrition the necessary account and taxpayer payment information at least five
17 (5) business days prior to the Effective Date. The Total Settlement Amount shall be
18 apportioned as follows:

19 **4.2** \$23,641.24 shall be considered a civil penalty pursuant to California Health and
20 Safety Code section 25249.7(b)(1). Within fifteen (15) business days ERC shall remit 75%
21 (\$17,730.93) of the civil penalty to the Office of Environmental Health Hazard Assessment
22 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in
23 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
24 remaining 25% (\$5,910.31) of the civil penalty.

25 **4.3** \$2,439.50 shall be distributed to ERC as reimbursement to ERC for reasonable
26 costs incurred in bringing this action.

27 **4.4** \$17,730.91 shall be distributed to ERC as an Additional Settlement Payment
28 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and

1 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
2 caused by Primal Nutrition in this matter. These activities are detailed below and support ERC's
3 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
4 supplement products in California. ERC's activities have had, and will continue to have, a direct
5 and primary effect within the State of California because California consumers will be benefitted
6 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
7 providing clear and reasonable warnings to California consumers prior to ingestion of the
8 products.

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

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

6 **4.5** \$4,225.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
7 attorney's fees, while \$14,463.35 shall be distributed to ERC for its in-house legal fees. Except
8 as explicitly provided herein, each Party shall bear its own fees and costs.

9 **4.6** In the event that Primal Nutrition fails to remit the Total Settlement Amount
10 owed under Section 4 of this Consent Judgment on or before the Due Date, Primal Nutrition
11 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
12 shall provide written notice of the delinquency to Primal Nutrition via electronic mail. If
13 Primal Nutrition fails to deliver the Total Settlement Amount within five (5) days from the
14 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
15 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
16 Primal Nutrition agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
17 collect the payment due under this Consent Judgment.

18 **5. MODIFICATION OF CONSENT JUDGMENT**

19 **5.1** This Consent Judgment may be modified (except as to money terms): (i) by
20 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
21 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
22 modified consent judgment.

23 **5.2** If any Party seeks to modify this Consent Judgment under Section 5.1, then that
24 Party must provide written notice to the other Party of its intent ("Notice of Intent"). The
25 Parties shall meet and confer in good faith regarding the proposed modification. Within thirty
26 (30) days of that meeting, if there remains a dispute over the proposed modification, the Party
27 disputing the modification shall provide the other Party a written basis for its position. The
28 Parties shall continue to meet and confer for an additional thirty (30) days in an effort to

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 Primal Nutrition initiates or otherwise requests a modification
4 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
5 modification of the Consent Judgment, Primal Nutrition shall reimburse ERC its costs and
6 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
7 arguing the motion or application. ERC shall not be reimbursed for costs or attorney's fees for
8 an uncontested motion, or for a ministerial motion (such as a change in name or contact
9 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
10 motion.

11 **5.4** Where the meet-and-confer process does not lead to an uncontested motion or to
12 a joint motion or application in support of a modification of the Consent Judgment, then either
13 Party may seek judicial relief on its own.

14 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
15 **JUDGMENT**

16 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
17 this Consent Judgment. This Consent Judgment may be enforced solely by the Parties hereto,
18 including their respective successors or assigns, provided each Party identifies any such
19 successor or assign in writing to the other Party.

20 **6.2** If ERC alleges that any Covered Product failed or fails to bear a Warning with
21 respect to lead and was manufactured for sale in the State of California, "Distributed into the
22 State of California," or directly sold in violation of this Consent Judgment, then ERC shall
23 inform Primal Nutrition in a reasonably prompt manner of its test results, including information
24 sufficient to permit Primal Nutrition to identify the Covered Products at issue, and of ERC's
25 calculation of the Daily Lead Exposure Level. Primal Nutrition shall, within thirty (30) days
26 following such notice, provide ERC with testing information, from an independent third-party
27 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, and other relevant information
28 it may wish to present to ERC, if any, demonstrating Primal Nutrition's compliance with the

1 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to
2 ERC taking any further legal action.

3 **7. APPLICATION OF CONSENT JUDGMENT**

4 This Consent Judgment applies to, and is binding upon, and benefits the Parties and their
5 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
6 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
7 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
8 application to any Covered Product which is distributed or sold exclusively outside the State of
9 California and which is not used by California consumers.

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

11 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
12 on behalf of itself and in the public interest, and Primal Nutrition and its respective officers,
13 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
14 manufacturers, franchisees, licensees, customers (not including private label customers of
15 Primal Nutrition), distributors, wholesalers, retailers, and all other upstream and downstream
16 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
17 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the
18 public interest, hereby fully releases and discharges the Released Parties from any and all
19 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
20 expenses asserted, or that could have been asserted from the handling, use, or consumption of
21 the Covered Products manufactured on or prior to the Effective Date, as to any alleged
22 violation of Proposition 65 or its implementing regulations arising from the failure to provide
23 Proposition 65 warnings on the Covered Products regarding lead up to and including the
24 Effective Date.

25 **8.2** ERC on its own behalf only, and Primal Nutrition on its own behalf only,
26 further waive and release any and all claims they may have against each other for all actions or
27 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
28 65 in connection with the Notice and Complaint up through and including the Effective Date,

1 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
2 enforce the terms of this Consent Judgment.

3 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
4 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
5 discovered. ERC on behalf of itself only, and Primal Nutrition on behalf of itself only,
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such
7 claims up through and including the Effective Date, including all rights of action therefore.
8 ERC and Primal Nutrition acknowledge that the claims released in Sections 8.1 and 8.2 above
9 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
10 any such unknown claims. California Civil Code section 1542 reads as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
14 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
15 OR HER SETTLEMENT WITH THE DEBTOR.

16 ERC on behalf of itself only, and Primal Nutrition on behalf of itself only, acknowledge and
17 understand the significance and consequences of this specific waiver of California Civil Code
18 section 1542.

19 **8.4** Compliance with the terms of this Consent Judgment by Primal Nutrition shall
20 be deemed to constitute compliance with Proposition 65 by any Released Party regarding
21 alleged exposures to lead in the Covered Products as set forth in the Notice and Complaint after
22 the Effective Date.

23 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
24 environmental exposures arising under Proposition 65, nor shall it apply to any of Primal
25 Nutrition's products other than the Covered Products.

26 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

29 **10. GOVERNING LAW**

The terms and conditions of this Consent Judgment shall be governed by and construed in

1 accordance with the laws of the State of California.

2 **11. PROVISION OF NOTICE**

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

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

7 Chris Heptinstall, Executive Director, Environmental Research Center
8 3111 Camino Del Rio North, Suite 400
9 San Diego, CA 92108
10 Tel: (619) 500-3090
11 Email: chris_erc501c3@yahoo.com.

12 With a copy to:

13 RYAN HOFFMAN
14 MICHAEL FREUND & ASSOCIATES
15 1919 Addison Street, Suite 105
16 Berkeley, CA 94704
17 Telephone: (510) 540-1992
18 Facsimile: (510) 540-5543

19 **PRIMAL NUTRITION, LLC**
20 **PRIMAL NUTRITION, INC.**

21 Mark Sisson
22 Primal Nutrition
23 1000 South Pointe Dr. #2201
24 Miami Beach, FL 33139
25 mdsisson@gmail.com.

26 With a copy to:

27 JUDITH M. PRAITIS
28 SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013-1010
Ph: (213) 896-6000
Email: jpraitis@sidley.com.

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
Motion for Court Approval. Primal Nutrition shall not object to judicial approval of the

1 Consent Judgment in the form it was executed and, upon request of ERC, shall file a Statement
2 of Non-Opposition to these Consent Judgment terms

3 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
4 the Parties shall meet and confer with the Attorney General, or with each other, as applicable,
5 to attempt in good faith to resolve the concern in a timely manner, and if possible prior to the
6 hearing on the motion.

7 **12.3** If this Stipulated Consent Judgment is not approved by the Court in the form it
8 was executed within one (1) year of execution by all Parties it shall be void and have no force
9 or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

28

1 **16. ENFORCEMENT**

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

7 **17. ENTIRE AGREEMENT, AUTHORIZATION**

8 **17.1** This Consent Judgment contains the sole and entire agreement and
9 understanding of the Parties with respect to the entire subject matter herein, and any and all
10 prior discussions, negotiations, commitments, and understandings related hereto. No
11 representations, oral or otherwise, express or implied, other than those contained herein have
12 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
13 herein, shall be deemed to exist or to bind any Party.

14 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

24 (2) Make the findings pursuant to California Health and Safety Code section
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

26 ///

27 ///

28 ///

1 **IT IS SO STIPULATED:**

2 Dated: _____, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

3

4

By: _____
Chris Heptinstall, Executive Director

5

6 Dated: MAY 18, 2018

PRIMAL NUTRITION, LLC

7

8

By: 
Its: MARK SISSON
MANAGING MEMBER

9

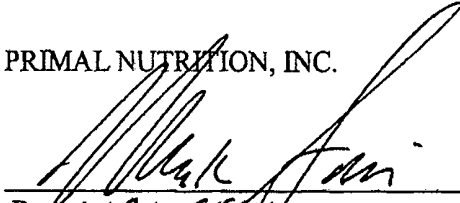
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11 Dated: MAY 18, 2018

PRIMAL NUTRITION, INC.

12

13

By: 
Its: MARK SISSON
PRESIDENT

14

15

15 **APPROVED AS TO FORM:**

16

16 Dated: _____, 2018

MICHAEL FREUND & ASSOCIATES

17

18

19

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

20

21

22 Dated: _____, 2018

SIDLEY AUSTIN LLP

23

24

By: _____
Judith M. Praitis
Attorneys for Defendants Primal Nutrition,
LLC and Primal Nutrition, Inc.

25

26

27

28

1 **IT IS SO STIPULATED:**

2 Dated: _____, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

3

4

By: _____
Chris Heptinstall, Executive Director

5

6 Dated: _____, 2018

PRIMAL NUTRITION, LLC

7

8

By: _____
Its: _____

9

10

11 Dated: _____, 2018

PRIMAL NUTRITION, INC.

12

13

By: _____
Its: _____

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15

APPROVED AS TO FORM:

16

Dated: _____, 2018

MICHAEL FREUND & ASSOCIATES

17

18

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

19

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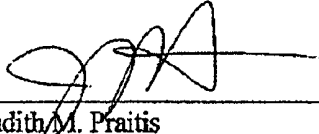
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Dated: May 18, 2018

SIDLEY AUSTIN LLP

22

23

By:  _____
Judith M. Praitis
Attorneys for Defendants Primal Nutrition,
LLC and Primal Nutrition, Inc.

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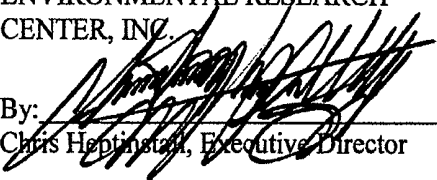
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1 **IT IS SO STIPULATED:**

2 Dated: 5/22, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

6 Dated: _____, 2018

PRIMAL NUTRITION, LLC

By:
Its:

11 Dated: _____, 2018


PRIMAL NUTRITION, INC.

By:
Its:

15 **APPROVED AS TO FORM:**

16 Dated: 5/22, 2018

MICHAEL FREUND & ASSOCIATES

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

22 Dated: _____, 2018

SIDLEY AUSTIN LLP

By: _____
Judith M. Praitis
Attorneys for Defendants Primal Nutrition,
LLC and Primal Nutrition, Inc.

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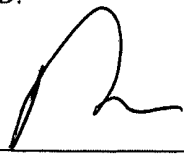
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ORDER AND JUDGMENT

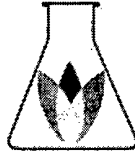
Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 9/18/, 2018



Judge of the Superior Court



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

March 27, 2018

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

Primal Nutrition, LLC
Primal Nutrition, Inc.

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) **Primal Damage Control Micronutrient SuperFormula - Lead**
- 2) **Primal Master Formula - Lead**
- 3) **Primal Kitchen Chocolate Coconut Primal Fuel Low-Carb Meal Replacement Shake - Lead**

Exhibit A

**4) Primal Kitchen Collagen Fuel Chocolate Coconut Grass-Fed Collagen Peptide Drink Mix
– Lead**

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the 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 March 27, 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 Violators violated Proposition 65 because they failed to provide persons ingesting 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 Violators 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.

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

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Primal Nutrition, LLC; Primal Nutrition, Inc.; and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Primal Nutrition, LLC and Primal Nutrition, Inc.

I, Chris Heptinstall, declare:

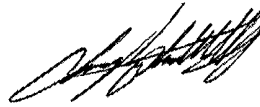
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: March 27, 2018

Chris Heptinstall

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 March 27, 2018 between 8:00 a.m. and 5:00 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 the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Primal Nutrition, LLC
1641 S Rose Avenue
Oxnard, CA 93033

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, LLC)
1220 S Street, Suite 150
Sacramento, CA 95811

Current President or CEO
Primal Nutrition, Inc.
1641 S Rose Avenue
Oxnard, CA 93033

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, Inc.)
1220 S Street, Suite 150
Sacramento, CA 95811

Current President or CEO
Primal Nutrition, Inc.
6202 Ramirez Mesa Drive
Malibu, CA 90265

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, LLC)
9 E Loockerman Street, Suite 311
Dover, DE 19901

Current President or CEO
Primal Nutrition, LLC
1679 S Dupont Hwy, Suite 100
Dover, DE 19901

Registered Agent Solutions, Inc.
(Registered Agent for Primal Nutrition, LLC)
1010 Dale Street N
St. Paul, MN 55117

On March 27, 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
Post Office Box 70550
Oakland, CA 94612-0550

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

March 27, 2018

Page 5

On March 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

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

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

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

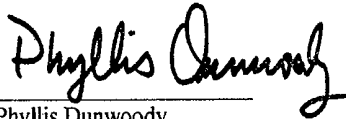
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 27, 2018

Page 6

On March 27, 2018 between 8:00 a.m. and 5:00 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 First Class Mail.

Executed on March 27, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 27, 2018

Page 7

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
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

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

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

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

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

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

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

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa
Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

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

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

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

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

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's
Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

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 contaminant² 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

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.