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 By S. M. [Signature] Deputy

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13 doing business as NOW FOODS

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **COUNTY OF ALAMEDA**

16 **ENVIRONMENTAL RESEARCH**
 17 **CENTER, INC., a California non-profit**
 18 **corporation**

19 **Plaintiff,**

20 vs.

21 **NOW HEALTH GROUP, INC.,**
 22 **individually and doing business as NOW**
 23 **FOODS and DOES 1-100**

24 **Defendants.**

CASE NO. RG18928986

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 19, 2018

Trial Date: None set

25 **1. INTRODUCTION**

26 1.1 On November 19, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"),
 27 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
 28 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against NOW Health Group, Inc., individually and doing business as NOW
3 Foods (“NOW Foods”) and Does 1-100. In this action, ERC alleges that a number of products
4 manufactured, distributed, or sold by NOW Foods contain lead and/or cadmium, chemicals
5 listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to
6 these chemicals at a level requiring a Proposition 65 warning. These products (referred to
7 hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are:
8 (1) NOW Alfalfa Powder, (2) NOW Certified Organic Psyllium Husk Powder, (3) NOW
9 Psyllium Husk Caps 700 mg, (4) NOW Alfalfa Tablets, (5) NOW Psyllium Husk Caps 500 mg,
10 (6) NOW Certified Organic Chlorella Tablets, (7) NOW Certified Organic Barley Grass,
11 (8) NOW Chlorella Caps, (9) NOW Acai SuperFruit Juice, (10) NOW Probiotic Defense,
12 (11) NOW Rei-Shi Mushrooms Caps, (12) NOW Whole Psyllium Husks, (13) NOW Certified
13 Organic Chlorella Pure Powder, (14) NOW Psyllium Husk Powder, (15) NOW Bee Pollen
14 Caps, (16) NOW Green PhytoFoods Powder, (17) NOW Certified Organic Maca Pure Powder,
15 (18) NOW Garcinia Tablets, (19) NOW Licorice Root Caps, (20) NOW Detox Support Caps,
16 (21) NOW Modified Citrus Pectin Caps, (22) NOW Super Colostrum, (23) NOW Certified
17 Organic Wheat Grass, (24) NOW Graviola Caps, (25) NOW Natural Spirulina Caps,
18 (26) NOW Red Clover Caps, (27) NOW Artichoke Extract Caps, (28) NOW Certified Organic
19 Fiber-3, (29) NOW Pau D’ Arco Caps, (30) NOW Argentine Beef Liver Powder, (31) NOW
20 Modified Citrus Pectin Pure Powder, (32) NOW Liver Caps, (33) NOW Elderberry & Zinc
21 Lozenges, (34) Protocol For Life Balance Milk Thistle Extract Caps, (35) NOW Sports Soy
22 Protein Isolate Natural Vanilla, (36) NOW Sports Soy Protein Isolate Natural Chocolate,
23 (37) NOW Sports Fit & Tone Protein Mocha, (38) NOW Sports Plant Protein Complex
24 Chocolate Mocha, (39) NOW Sports Pea Protein Vanilla Toffee, (40) NOW Sports Pea Protein
25 Creamy Chocolate (formerly NOW Sports Pea Protein Dutch Chocolate), (41) NOW Sports
26 Organic Plant Protein Creamy Vanilla (formerly NOW Sports Organic Plant Protein Natural
27 Vanilla), (42) NOW Sports Organic Plant Protein Natural Unflavored, (43) NOW Sports
28

1 Organic Pea Protein Natural Chocolate, and (44) NOW Sports Organic Pea Protein Natural
2 Vanilla.

3 1.2 A Covered Product for which only lead is identified in the Notices is not
4 required to comply with any injunctive terms relating to cadmium in Section 3. A Covered
5 Product for which only cadmium is identified in the Notices is not required to comply with any
6 injunctive terms relating to lead in Section 3.

7 1.3 ERC and NOW Foods are hereinafter referred to individually as a "Party" or
8 collectively as the "Parties."

9 1.4 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
10 causes, helping safeguard the public from health hazards by reducing the use and misuse of
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
12 and encouraging corporate responsibility.

13 1.5 For purposes of this Consent Judgment, the Parties agree that NOW Foods is a
14 business entity that has employed ten or more persons at all times relevant to this action, and
15 qualifies as a "person in the course of doing business" within the meaning of Proposition 65.
16 NOW Foods manufactures, distributes, and/or sells the Covered Products.

17 1.6 The Complaint is based on allegations contained in ERC's Notices of Violation
18 dated January 29, 2018 and July 24, 2018 that were served on the California Attorney General,
19 other public enforcers, and NOW Foods ("Notices"). True and correct copies of the 60-Day
20 Notices dated January 29, 2018 and July 24, 2018 are attached hereto as **Exhibits A and B**
21 respectively and each is incorporated herein by reference. More than sixty (60) days have
22 passed since the Notices were served on the Attorney General, public enforcers, and NOW
23 Foods, and no designated governmental entity has filed a complaint against NOW Foods with
24 regard to the Covered Products or the alleged violations.

25 1.7 ERC's Notices and Complaint allege that use of the Covered Products exposes
26 persons in California to lead and/or cadmium without first providing clear and reasonable
27 warnings in violation of California Health and Safety Code section 25249.6. NOW Foods
28 denies all material allegations contained in the Notices and Complaint.

1 1.8 The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
4 be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, customers,
6 suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law.

7 1.9 Except as expressly set forth herein, nothing in this Consent Judgment shall
8 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
9 current or future legal proceeding unrelated to these proceedings.

10 1.10 The Effective Date of this Consent Judgment is the date on which it is entered as
11 a Judgment by this Court.

12 **2. JURISDICTION AND VENUE**

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

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

21 3.1 Beginning on the Effective Date, any Covered Products that are manufactured
22 on or after the Effective Date that NOW Foods "Distributes into the State of California" or
23 directly sells in the State of California shall either qualify as a Reformulated Covered Product
24 under Section 3.3 or comply with the warning requirements under Section 3.2.

25 3.1.1 As used in this Consent Judgment, the term "Distributes into the State of
26 California" shall mean to directly ship a Covered Product into California for sale in California
27 or to sell a Covered Product to a distributor that NOW Foods knows or has reason to know will
28 sell the Covered Product in California.

1 3.1.2 For purposes of this Consent Judgment, the “Daily Lead Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of lead per gram of product, multiplied by grams of product per serving of the
4 product (using the largest serving size appearing on the product label), multiplied by servings
5 of the product per day (using the largest number of recommended daily servings appearing on
6 the label), which equals micrograms of lead exposure per day. If the label contains no
7 recommended daily servings, then the number of recommended daily servings shall be one.

8 3.1.3 For purposes of this Consent Judgment, the “Daily Cadmium Exposure
9 Level” shall be measured in micrograms, and shall be calculated using the following formula:
10 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
11 product (using the largest serving size appearing on the product label), multiplied by servings
12 of the product per day (using the largest number of recommended daily servings appearing on
13 the label), which equals micrograms of cadmium exposure per day. If the label contains no
14 recommended daily servings, then the number of recommended daily servings shall be one.

15 **3.2 Clear and Reasonable Warnings**

16 If NOW Foods is required to provide a warning pursuant to Section 3.1, the following
17 warning statement must be utilized (“Warning”):

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

22 NOW Foods shall use the phrase “cancer and” in the Warning for a Covered Product if
23 NOW Foods has reason to believe that the “Daily Lead Exposure Level” is greater than 15
24 micrograms of lead as determined pursuant to the quality control methodology set forth in Section
25 3.4. As identified in the brackets, the Warning shall appropriately identify at least one listed
26 chemical (either lead or cadmium) that is present in each of the Covered Products. If a Covered
27 Product contains both lead and cadmium, the Warning may identify lead, cadmium, or both, at
28 NOW Foods’ discretion. Where the Warning is being provided for more than one endpoint (cancer
and reproductive toxicity) the Warning must include the name of one or more chemicals for each

1 endpoint, unless the named chemical is listed as known to cause both cancer and reproductive
2 toxicity and has been so identified in the Warning.

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

11 If the product is offered by NOW Foods on a website for purchase by consumers in
12 California, the Warning must be provided on that website, and the Warning shall be at least the
13 same size as the largest of any other health or safety warnings also appearing on the website. If
14 the Warning is provided on the label or container of NOW Foods' product packaging, the Warning
15 shall be at least the same size as the largest of any other health or safety warnings also appearing
16 on the label or container. The word "WARNING" shall be in all capital letters and in bold print.
17 No statements intended to or likely to have the effect of diminishing the impact of the Warning on
18 the average lay person shall accompany the Warning. Further, no statements may accompany the
19 Warning that state or imply that the source of the listed chemical has an impact on or results in a
20 less harmful effect of the listed chemical.

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

25 3.3 Reformulated Covered Products

26 3.3.1. A Reformulated Covered Product is a Covered Product for which the "Daily Lead
27 Exposure Level" is no greater than 0.5 micrograms of lead per day after subtracting the amount of
28 lead deemed to be "naturally occurring" for each ingredient listed in Table 3.3.3, pursuant to the

1 method outlined below, for Covered Products that contain lead, and as determined under the
2 testing and quality control methodology of Section 3.4. Additionally, for Covered Products that
3 contain cadmium, a Reformulated Covered Product is a Covered Product for which the "Daily
4 Cadmium Exposure Level" is no more than 4.1 micrograms of cadmium per day as determined by
5 the testing and quality control methodology described in Section 3.4.

6 **3.3.2** The amount of lead deemed "naturally occurring" in each of the Reformulated
7 Covered Products is the sum of the amounts of "naturally occurring" lead supplied by the
8 quantity of each ingredient listed in Table 3.3.3 that is present in each Reformulated Covered
9 Product. For each ingredient listed in Table 3.3.3, the amount of lead deemed "naturally
10 occurring" is listed in Table 3.3.3 in micrograms of "naturally occurring" lead per gram of the
11 ingredient that is contained in the Reformulated Covered Product.

12 To subtract the "naturally occurring" lead in any Covered Product for purposes of
13 determining the Daily Lead Exposure Level and whether the Covered Product qualifies as a
14 Reformulated Covered Product under this Consent Judgment, as provided in Section 3.3.1,
15 NOW Foods shall provide to ERC, within thirty (30) days after the first anniversary of the
16 Effective Date, the documentation required under Section 3.3.3(a)-(c). No deduction for
17 "naturally occurring" lead shall be permitted until after NOW Foods provides to ERC the
18 documentation required under Section 3.3.3(a)-(c) as indicated in the preceding sentence.
19 Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if NOW
20 Foods deducts "naturally occurring" lead in calculating the Daily Lead Exposure Level, NOW
21 Foods shall provide to ERC, within thirty (30) days after each such anniversary date, the
22 documentation required under Section 3.3.3(a)-(c) for each such applicable twelve-month
23 period preceding the applicable anniversary of the Effective Date.

24 **3.3.3.** In calculating the Daily Lead Exposure Level to determine whether a Covered
25 Product qualifies as a Reformulated Covered Product, NOW Foods shall be allowed to deduct
26 the amount of lead which is deemed to be "naturally occurring" in any ingredient listed in Table
27 3.3.3 ("Lead Ingredient") that is contained in that Covered Product under the following
28 conditions: (a) NOW Foods itself or from its Lead Ingredient supplier shall obtain either (i) a

1 valid test result showing lead is present in the Lead Ingredient at a specific concentration or in a
 2 range; or (ii) a certificate of analysis or certificate of compliance that shows lead is present in the
 3 Lead Ingredient at a specific concentration or in a range; and (b) NOW Foods shall obtain the
 4 documentation in Section 3.3.3(a) (i) or (ii) for each lot of that Lead Ingredient that is delivered
 5 to NOW Foods (or its manufacturer if NOW Foods does not manufacture the Covered Product)
 6 within twelve (12) months after the Effective Date (or its anniversary date as applicable) for
 7 incorporation into the Covered Product; and (c) NOW Foods shall document the total amount (in
 8 grams) of each Lead Ingredient contained in the Covered Product. If the documentation obtained
 9 pursuant to Section 3.3.3(a) and (b) documents the presence of lead in any Lead Ingredient in
 10 **Table 3.3.3**, NOW Foods shall be entitled to deduct the amount of the "naturally occurring" lead
 11 for that Lead Ingredient, as listed in **Table 3.3.3**. If the Covered Product does not contain a Lead
 12 Ingredient listed in **Table 3.3.3**, NOW Foods shall not be entitled to a deduction for "naturally
 13 occurring" lead in **Table 3.3.3** for that Covered Product.

14 **Table 3.3.3**

Ingredient	Amount of lead (Pb) per gram of ingredient deemed naturally occurring
Calcium (elemental)	0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of magnesium hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	1.1 mcg Pb per gram of potassium chloride
Cocoa powder	1.0 mcg Pb per gram of cocoa powder

25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1** Beginning within one (1) year of the Effective Date, NOW Foods shall
 27 arrange for lead and cadmium testing of the Covered Products at least once a year for a
 28 minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected

1 samples of each of the Covered Products, in the form intended for sale to the end-user, which
2 NOW Foods intends to sell in California, manufactures for sale in California, directly sells to a
3 consumer in California, or "Distributes into the State of California." If tests conducted
4 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
5 each of three (3) consecutive years, then the testing requirements of this Section will no longer
6 be required as to that Covered Product. However, if during or after the three (3)-year testing
7 period, NOW Foods changes ingredient suppliers for any of the Covered Products and/or
8 reformulates any of the Covered Products with respect to (a) any ingredient listed in **Table**
9 **3.3.3** and/or (b) any ingredient that contributes more than 0.1 mcg/day of lead or 0.4 mcg/day
10 of cadmium in the finished product (as calculated by the formulas set forth in Sections 3.1.2
11 and 3.1.3), then NOW Foods shall test that Covered Product annually for at least four (4)
12 consecutive years after such change is made. The testing requirements of Section 3.4 shall not
13 apply to any Covered Product for which NOW Foods provides a warning pursuant to Section
14 3.2. Nothing in Section 3.4.1 shall be construed to add, change or increase any "naturally
15 occurring" allowance as provided in Section 3.3.

16 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
17 "Daily Cadmium Exposure Level," to determine whether a Covered Product qualifies as a
18 Reformulated Covered Product, the highest lead and/or cadmium detection result of the three
19 (3) randomly selected samples of the Covered Products will be controlling.

20 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
21 laboratory method that complies with the performance and quality control factors appropriate
22 for the method used, including limit of detection, qualification, accuracy, and precision that
23 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

25 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
26 independent third-party laboratory certified by the California Environmental Laboratory
27 Accreditation Program or an independent third-party laboratory that is registered with the
28 United States Food & Drug Administration.

1 3.4.5 Nothing in this Consent Judgment shall limit NOW Foods' ability to
2 conduct, or require that others conduct, additional testing of the Covered Products, including
3 the raw materials used in their manufacture.

4 3.4.6 Within thirty (30) days of receipt of ERC's written request, NOW Foods
5 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. NOW Foods shall retain all
6 test results and documentation for a period of five (5) years from the date of each test.

7 **4. SETTLEMENT PAYMENT**

8 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
9 attorneys' fees, and costs, NOW Foods shall make a total payment of \$260,000.00 ("Total
10 Settlement Amount") to ERC within five (5) days of the Effective Date ("Due Date"). NOW
11 Foods shall make this payment by wire transfer to ERC's account, for which ERC will give
12 NOW Foods the necessary account information. The Total Settlement Amount shall be
13 apportioned as follows:

14 4.2 \$91,488.24 shall be considered a civil penalty pursuant to California Health and
15 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$68,616.18) of the civil penalty to
16 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
18 Code section 25249.12(c). ERC will retain the remaining 25% (\$22,872.06) of the civil
19 penalty.

20 4.3 \$21,377.48 shall be distributed to ERC as reimbursement to ERC for reasonable
21 costs incurred in bringing this action.

22 4.4 \$68,616.06 shall be distributed to ERC as an Additional Settlement Payment
23 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
24 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
25 caused by NOW Foods in this matter. These activities are detailed below and support ERC's
26 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
27 supplement products in California. ERC's activities have had, and will continue to have, a direct
28 and primary effect within the State of California because California consumers will be benefitted

1 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
2 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
3 the products.

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

24 ERC shall be fully accountable in that it will maintain adequate records to document and
25 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
26 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
27 shall provide the Attorney General, within thirty (30) days of any request, copies of
28 documentation demonstrating how such funds have been spent.

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2 **4.5** \$8,595.00 shall be distributed to Michael Freund as reimbursement of ERC's
3 attorneys' fees, \$14,592.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's
4 attorneys' fees, while \$55,330.72 shall be distributed to ERC for its in-house legal fees. Except
5 as explicitly provided herein, each Party shall bear its own fees and costs.

6 **4.6** In the event that NOW Foods fails to remit the Total Settlement Amount owed
7 under Section 4 of this Consent Judgment on or before the Due Date, NOW Foods shall be
8 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
9 provide written notice of the delinquency to NOW Foods via electronic mail. If NOW Foods
10 fails to deliver the Total Settlement Amount within five (5) days from receipt of the written
11 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
12 provided in the California Code of Civil Procedure section 685.010. Additionally, NOW Foods
13 agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the payment
14 due under this Consent Judgment.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
18 (ii) by motion of either Party pursuant to Sections 5.3 or 5.4 and upon entry by the Court of a
19 modified consent judgment.

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

1 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an
2 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in
3 writing to different deadlines for the meet-and-confer period.

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

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

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.

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

26 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

6 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
7 on behalf of itself and in the public interest, and NOW Foods and its respective officers,
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
9 customers (not including private label customers of NOW Foods), distributors, wholesalers,
10 retailers, and all other upstream and downstream entities in the distribution chain of any
11 Covered Product, and the predecessors, successors, and assigns of any of them (collectively,
12 "Released Parties"). ERC, on behalf of itself and its respective owners, principals,
13 shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns,
14 and legal representatives (collectively referred to as "ERC Releasors"), and in the public
15 interest, hereby fully releases and discharges the Released Parties from any and all claims,
16 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
17 expenses asserted, or that could have been asserted from the handling, use, or consumption of
18 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
19 regulations arising from the failure to provide Proposition 65 warnings on the Covered
20 Products regarding lead and/or cadmium up to and including the Effective Date.

21 **8.2** ERC, on behalf of itself and the ERC Releasors, and not on behalf of the
22 general public, hereby releases and discharges the Released Parties from any and all claims that
23 were asserted, or that could have been asserted, for any alleged violations of any other statutory
24 or common law arising from alleged exposures to lead and/or cadmium in the Covered
25 Products manufactured, distributed, or sold by NOW Foods before the Effective Date.

26 **8.3** ERC, on behalf of itself and the ERC Releasors, and NOW Foods on behalf
27 of itself and its parent companies, affiliates under common ownership, subsidiaries, divisions,
28 shareholders, directors, officers, members, managers, owners, employees, and agents

1 (collectively, "NOW Foods Releasers") further waive and release any and all claims they may
2 have against each other for all actions or statements made or undertaken in the course of
3 seeking or opposing enforcement of Proposition 65 in connection with the Notices and
4 Complaint up through and including the Effective Date, provided, however, that nothing in
5 Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent
6 Judgment.

7 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
8 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
9 discovered. ERC, on behalf of itself and the ERC Releasers, and NOW Foods, on behalf of
10 itself and the NOW Foods Releasers, acknowledge that this Consent Judgment is expressly
11 intended to cover and include all such claims up through and including the Effective Date,
12 including all rights of action therefor. ERC and NOW Foods acknowledge that the claims
13 released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive
14 California Civil Code section 1542 as to any such unknown claims. California Civil Code
15 section 1542 reads as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
19 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
20 OR HER SETTLEMENT WITH THE DEBTOR.

20 ERC, on behalf of itself only, and NOW Foods, on behalf of itself only, acknowledge and
21 understand the significance and consequences of this specific waiver of California Civil Code
22 section 1542.

23 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
24 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
25 to lead and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

26 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
27 environmental exposures arising under Proposition 65, nor shall it apply to any of NOW Foods'
28 products other than the Covered Products.

1 ///

2 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

5 **10. GOVERNING LAW**

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

8 **11. PROVISION OF NOTICE**

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

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

13 Chris Heptinstall, Executive Director, Environmental Research Center
14 3111 Camino Del Rio North, Suite 400
15 San Diego, CA 92108
16 Telephone: (619) 500-3090
17 Email: chris_erc501c3@yahoo.com

18 With a copy to:
19 Michael Freund
20 Ryan Hoffman
21 Michael Freund & Associates
22 1919 Addison Street, Suite 105
23 Berkeley, CA 94704
24 Telephone: (510) 540-1992
25 Facsimile: (510) 540-5543

26 **NOW HEALTH GROUP, INC., individually
27 and doing business as NOW FOODS**

28 Jim Emme, CEO
29 244 Knollwood Drive
30 Bloomingdale, IL 60108
31 Telephone: (630) 545-9098
32 Email: jim.emme@nowfoods.com

33 ///

34 ///

1 ///

2 With a copy to:

3 Sarah Esmaili

4 Arnold & Porter Kaye Scholer LLP

5 Three Embarcadero Center, 10th Floor

6 San Francisco, CA 94111

7 Telephone: (415) 471-3283

8 Facsimile: (415) 471-3400

9 Email: sarah.esmaili@arnoldporter.com

10
11
12 **12. COURT APPROVAL**

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

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

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

21 **13. EXECUTION AND COUNTERPARTS**

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

25 **14. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
28 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

1 equally in the preparation and drafting of this Consent Judgment.

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

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

7 **16. ENFORCEMENT**

8 ERC may, by motion or order to show cause before the Superior Court of Alameda
9 County, enforce the terms and conditions contained in this Consent Judgment. In any action
10 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
11 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
12 To the extent the failure to comply with the Consent Judgment constitutes a violation of
13 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
14 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
15 law for failure to comply with Proposition 65 or other laws.

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

23 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

27 This Consent Judgment has come before the Court upon the request of the Parties. The
28 Parties request the Court to fully review this Consent Judgment and, being fully informed

1 regarding the matters which are the subject of this action, to:

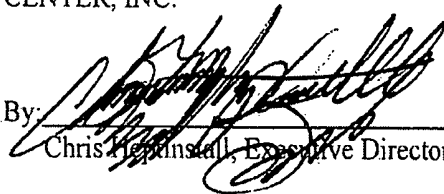
2 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
3 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
4 been diligently prosecuted, and that the public interest is served by such settlement; and

5 (2) Make the findings pursuant to California Health and Safety Code section
6 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

7 **IT IS SO STIPULATED:**

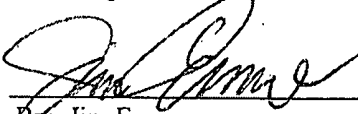
8 Dated: 12/14/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

9
10
11 By: 
Chris Hegininstall, Executive Director

12
13 Dated: 12-14, 2018

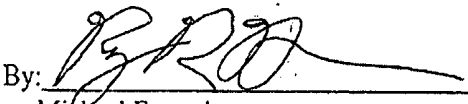
NOW HEALTH GROUP, INC., individually
and doing business as NOW FOODS

14
15
16 By: 
Jim Emme
17 Its: CEO

18
19
20 **APPROVED AS TO FORM:**

21
22
23 Dated: 12/17, 2018

MICHAEL FREUND & ASSOCIATES

24
25 By: 
Michael Freund
26 Ryan Hoffman
27 Attorneys for Plaintiff Environmental
Research Center, Inc.

28

1 Dated: Dec. 14, 2018

ARNOLD & PORTER KAYE
SCHOLER LLP

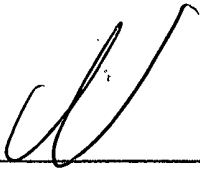
2
3 By: Sarah Esmail
4 Sarah Esmail
5 Attorney for Defendant NOW Health
6 Group, Inc., individually and doing
7 business as NOW Foods

8 **ORDER AND JUDGMENT**

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

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12
13 Dated: 3/19, 2018

14 
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.

January 29, 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:

NOW Health Group, Inc., individually and doing business as NOW Foods

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

1. NOW Alfalfa Powder Green Superfood - Lead
2. NOW Certified Organic Psyllium Husk Powder Soluble Fiber - Lead
3. NOW Psyllium Husk Caps 700 mg Intestinal Health - Lead
4. NOW Alfalfa 650 mg Green Superfood - Lead
5. NOW Psyllium Husk Caps 500 mg Intestinal Health - Lead
6. NOW Certified Organic Chlorella 500 mg Green Superfood - Lead
7. NOW Certified Organic Barley Grass Green Superfood - Lead
8. NOW Chlorella 400 mg Green Superfood - Lead
9. NOW Acai SuperFruit Juice - Lead
10. NOW Shark Cartilage 750 mg Promotes Skeletal Health - Lead
11. NOW Probiotic Defense Healthy Intestinal Flora - Lead
12. NOW Rei-Shi Mushrooms 270 mg Super Mushrooms - Lead
13. NOW Whole Psyllium Husks Soluble Fiber - Lead
14. NOW Certified Organic Chlorella Pure Powder Green Superfood - Lead

Exhibit A

15. NOW Psyllium Husk Powder Soluble Fiber - Lead
16. NOW Bee Pollen Caps 500 mg Nutrient-Dense - Lead
17. NOW Green PhytoFoods Super Nutrient Blend - Lead
18. NOW Certified Organic Maca Pure Powder 6:1 Concentrate Reproductive Health - Lead
19. NOW Garcinia 1000 mg Healthy Metabolism - Lead
20. NOW Licorice Root 450 mg Herbal Supplement - Lead
21. NOW Detox Support Detoxification Formula - Lead
22. NOW Modified Citrus Pectin 800 mg Supports Healthy Detoxification - Lead
23. NOW Super Colostrum 500 mg Supports Immune Function - Lead
24. NOW Certified Organic Wheat Grass Green Superfood - Lead
25. NOW Graviola 500 mg Healthy Cell Function - Lead
26. NOW Natural Spirulina 500 mg Nutrient Rich Superfood - Lead
27. NOW Red Clover 375 mg Herbal Supplement - Lead
28. NOW Artichoke Extract 450 mg Digestive Health - Lead
29. NOW Certified Organic Fiber-3 Excellent Source of Fiber - Cadmium

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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 29, 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

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

January 29, 2018

Page 3

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 NOW Health Group, Inc., individually and doing business as NOW Foods 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 NOW Health Group, Inc., individually and doing business as NOW Foods

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.

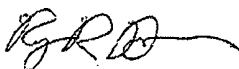
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

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

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

Dated: January 29, 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 January 29, 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 President or CEO
NOW Health Group, Inc., individually and
doing business as NOW Foods
244 Knollwood Drive
Bloomington, IL 60108

Current President or CEO
NOW Health Group, Inc., individually and
doing business as NOW Foods
575 Vista Boulevard
Sparks, NV 89434

Current President or CEO
NOW Health Group, Inc., individually and
doing business as NOW Foods
395 Glen Ellyn Road
Bloomington, IL 60108

James P Emme
(NOW Health Group, Inc., individually
and doing business as NOW Food's Registered
Agent for Service of Process)
244 Knollwood Drive
Bloomington, IL 60108

On January 29, 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 January 29, 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

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 29, 2018
Page 6

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

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

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

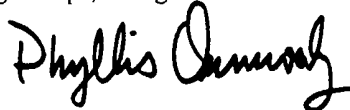
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

On January 29, 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 January 29, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

January 29, 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?

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.

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.

July 24, 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:

NOW Health Group, Inc., individually and doing business as NOW Foods

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

1. NOW Pau D' Arco 500 mg of Inner Bark Herbal Support - Lead
2. NOW Argentine Beef Liver Powder Super Food - Lead
3. NOW Modified Citrus Pectin Pure Powder Supports Healthy Detoxification - Lead
4. NOW Liver Caps Supports Liver Health - Lead
5. NOW Elderberry & Zinc Supports Immune System - Lead
6. Protocol For Life Balance Milk Thistle Extract 300 mg - Lead
7. NOW Sports Soy Protein Isolate Natural Vanilla - Lead
8. NOW Sports Soy Protein Isolate Natural Chocolate - Lead
9. NOW Sports Fit & Tone Protein Mocha Flavor - Lead
10. NOW Sports Plant Protein Complex Chocolate Mocha - Lead
11. NOW Sports Pea Protein Vanilla Toffee - Lead
12. NOW Sports Pea Protein Dutch Chocolate - Lead, Cadmium
13. NOW Sports Organic Plant Protein Natural Vanilla - Lead, Cadmium
14. NOW Sports Organic Plant Protein Natural Unflavored - Lead, Cadmium
15. NOW Sports Organic Pea Protein Natural Chocolate - Lead

Exhibit B

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16. NOW Sports Organic Pea Protein Natural Vanilla - 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

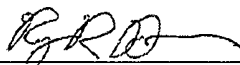
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 24, 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of 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 NOW Health Group, Inc., individually and doing business as NOW Foods 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 NOW Health Group, Inc., individually and doing business as NOW Foods

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 chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 24, 2018



Ryan Hoffman

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

July 24, 2018

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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 July 24, 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 President or CEO
NOW Health Group, Inc., individually and
doing business as NOW Foods
244 Knollwood Drive
Bloomington, IL 60108

Current President or CEO
NOW Health Group, Inc., individually and
doing business as NOW Foods
575 Vista Boulevard
Sparks, NV 89434

Current President or CEO
NOW Health Group, Inc., individually and
doing business as NOW Foods
395 Glen Ellyn Road
Bloomington, IL 60108

James P Emme
(NOW Health Group, Inc., individually
and doing business as NOW Food's Registered
Agent for Service of Process)
244 Knollwood Drive
Bloomington, IL 60108

On July 24, 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 July 24, 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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

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

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

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Kathryn L. Turner, Chief Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyCrimProp65@sandiego.gov

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
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San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.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

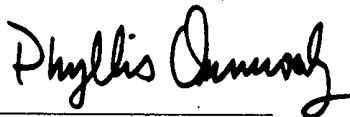
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

On July 24, 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 July 24, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

July 24, 2018

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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
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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
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330 West Broadway, Suite
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San Diego, CA 92101

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

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
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463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
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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 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

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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 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.

²See Section 25501(a)(4).

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.