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ALAMEDA COUNTY

JAN 30 2020

CLERK OF THE SUPERIOR COURT
By _____ Deputy

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14 NUTRAKEY, LLC and MACROCAP LABS, INC.

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

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

19 Plaintiff,

20 v.

21 NUTRAKEY, LLC, a Florida limited liability
22 company and MACROCAP LABS, INC., a
Florida corporation,

23 Defendants.
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25
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27
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CASE NO. RG18915863

ASSIGNED FOR ALL PURPOSES TO
HONORABLE MICHAEL MARKMAN,
DEPARTMENT 16

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 et seq.

Action Filed: August 7, 2018
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On August 7, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Injunctive Relief and Civil Penalties pursuant to the provisions of
5 California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Defendant
6 NUTRAKEY, LLC (“NUTRAKEY”) alleging Proposition 65 violations in twelve (12) of
7 NUTRAKEY’s dietary supplement products. Subsequently, on September 20, 2018, a First
8 Amended Complaint was filed alleging Proposition 65 violations in an additional ten (10) of
9 NUTRAKEY’s dietary supplement products. On May 16, 2019, a Second Amended Complaint
10 was filed alleging Proposition 65 violations in an additional two (2) of NUTRAKEY’s dietary
11 supplement products, and a Third Amended Complaint (the operative Complaint referred to
12 hereinafter as the “Complaint”) adding Defendant MACROCAP LABS, INC. (“MACROCAP
13 LABS” or collectively with NUTRAKEY as “DEFENDANTS¹”) as a defendant with regard to
14 all twenty-four (24) dietary supplement products was deemed filed as of May 28, 2019.

15 **1.2** In this action, ERC alleges that a number of products manufactured, distributed,
16 or sold by DEFENDANTS contain lead and/or cadmium, chemicals listed under Proposition 65
17 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
18 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
19 “Covered Product” or collectively as “Covered Products”) are: (1) N NutraKey Iso Optima With
20 Hydrolyzed Whey Protein Isolate Chocolate Ice Cream Swirl, (2) N NutraKey Health
21 Performance Inc. Hydro Pump Strawberry Lemonade, (3) N NutraKey Health Performance Inc.
22 Hydro Pump Cotton Candy, (4) N NutraKey Health Performance Inc. Hydro Pump, (5) N
23 NutraKey Whey Optima Premium Protein Complex Chocolate Lava Cake, (6) N NutraKey
24 Whey Optima Premium Protein Complex Cookies & Cream, (7) N NutraKey Raw Plant Protein
25 VPro Vanilla (8) N NutraKey Raw Plant Protein VPro Vegan Mochaccino, (9) N NutraKey
26 Health Performance Inc. Spirulina Antioxidant Superfood, (10) N NutraKey Health Performance

27
28 ¹ References to “DEFENDANTS” in Sections 3, 4 and 6 shall include NUTRAKEY only at times that NUTRAKEY
qualifies as a “person in the course of doing business.”

1 Inc. Antler Test Strength & Muscle Builder, (11) N NutraKey Whey Optima Premium Protein
2 Complex Salted Caramel Peanut Butter Cup, (12) N NutraKey Whey Optima Premium Protein
3 Complex Vanilla Ice Cream Cookie, (13) N NutraKey Health Performance Inc. Garcinia
4 Cambogia with White Kidney Bean Extract Fat Loss & Metabolism (14) N NutraKey Health
5 Performance Inc. Tribulus Pure Terrestris Strength & Performance, (15) N Nutrakey Tru PRE
6 Precision Formulated Pre-Workout Rainbow, (16) N Nutrakey Health Performance Inc. Garcinia
7 Cambogia Fat Loss & Metabolism, (17) N Nutrakey Inc Health Performance Tone Complex Fat
8 Loss & Metabolism, (18) N Nutrakey Tru PRE Precision Formulated Pre-Workout Blue Rock
9 Candy, (19) N Nutrakey Tru PRE Precision Formulated Pre-Workout Sour Gummy Worms, (20)
10 N NutraKey Tru Pre Precision Formulated Pre-Workout Tahitian Fruit Punch, (21) N NutraKey
11 Raw Plant Protein VPro Vegan Chocolate, (22) N NutraKey Raw Plant Protein VPro Vegan
12 Vanilla Cookies, (23) N NutraKey Raw Plant Protein VPro Vegan Natural, and (24) N NutraKey
13 Vegan VPro Raw Plant Protein Chocolate Bar.

14 **1.3** ERC and DEFENDANTS are hereinafter referred to individually as a “Party” or
15 collectively as the “Parties.”

16 **1.4** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
17 causes, helping safeguard the public from health hazards by reducing the use and misuse of
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
19 and encouraging corporate responsibility.

20 **1.5** ERC asserts that the DEFENDANTS are business entities that have employed ten
21 or more persons at all times relevant to this action, either individually or together as a single
22 enterprise. For purposes of this Stipulated Consent Judgment (“Consent Judgment”), the Parties
23 agree that the MACROCAP LABS qualifies as a “person in the course of doing business” within
24 the meaning of Proposition 65. NUTRAKEY and ERC dispute whether NUTRAKEY qualifies as
25 a “person in the course of doing business” within the meaning of Proposition 65 at times relevant
26 to this case. Nevertheless, NUTRAKEY agrees that at all times hereafter that NUTRAKEY
27 employs fewer than 10 people and does not qualify as a “person in the course of doing business”
28 within the meaning of Proposition 65, NUTRAKEY will cooperate and not interfere with ERC

1 and MACROCAP LABS in the enforcement of the terms of this Consent Judgment. Further,
2 NUTRAKEY agrees that at any time hereafter that NUTRAKEY employs more than 9 people and
3 does qualify as a “person in the course of doing business” within the meaning of Proposition 65,
4 NUTRAKEY will comply with and be bound by the terms of this Consent Judgment. The Parties
5 agree that MACROCAP LABS manufactures, distributes, and/or sells the Covered Products.

6 **1.6** The Complaint is based on allegations contained in ERC’s Notices of Violation
7 dated May 10, 2018, July 11, 2018, March 6, 2019, and March 18, 2019 that were served on the
8 California Attorney General, other public enforcers, NUTRAKEY, and MACROCAP LABS
9 (March 18, 2019 Notice only) (“Notices”). True and correct copies of the 60-Day Notices dated
10 May 10, 2018, July 11, 2018, March 6, 2019, and March 18, 2019 are attached hereto as
11 **Exhibits A through D** and are incorporated herein by reference.

12 **1.7** More than 60 days have passed since the Notices were served on the Attorney
13 General, public enforcers, and DEFENDANTS and no designated governmental entity has filed
14 a Complaint against DEFENDANTS with regard to the Covered Products or the alleged
15 violations.

16 **1.8** ERC’s Notices and Complaint allege that use of the Covered Products exposes
17 persons in California to lead and/or cadmium without first providing clear and reasonable
18 warnings in violation of California Health and Safety Code section 25249.6. DEFENDANTS
19 deny all material allegations contained in the Notices and Complaint. Nothing in this Consent
20 Judgment shall be construed as an admission by DEFENDANTS of any fact, issue of law, or
21 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as
22 an admission by DEFENDANTS of any fact, issue of law or violation of law, at any time, for
23 any purpose.

24 **1.9** The Parties have entered into this Consent Judgment in order to settle,
25 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
26 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
27 be construed as an admission by any of the Parties or by any of their respective officers,
28 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,

1 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
2 violation of law.

3 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall
4 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
5 current or future legal proceeding unrelated to these proceedings.

6 **1.11** The Effective Date of this Consent Judgment is the date on which ERC serves
7 notice on DEFENDANTS that it has been entered as a Judgment by this Court.

8 **2. JURISDICTION AND VENUE**

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

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

17 **3.1** Beginning on the Effective Date, DEFENDANTS shall be permanently enjoined
18 from manufacturing for sale in the State of California, "Distributing into the State of
19 California," or directly selling in the State of California, any Covered Products which expose a
20 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
21 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
22 meets the warning requirements under Section 3.2.

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

27 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
28 Level" shall be measured in micrograms, and shall be calculated using the following formula:

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

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

1 To deduct the Naturally Occurring Lead in any Covered Product for purposes of
 2 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this
 3 Section 3.1.3, DEFENDANTS shall provide to ERC, within thirty (30) days after the first
 4 anniversary of the Effective Date, the documentation required under Section 3.1.3(a)-(c).
 5 Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if
 6 DEFENDANTS deduct Naturally Occurring Lead in a Lead Ingredient in calculating the Daily
 7 Lead Exposure Level, DEFENDANTS shall provide to ERC, within thirty (30) days after each
 8 such anniversary date, the documentation for each Lead Ingredient required under Section 3.1.3
 9 (a)-(c) for each such applicable twelve (12) month period prior to the anniversary date.

10 **TABLE 1**


INGREDIENT	NATURALLY OCCURRING AMOUNTS OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram
Chocolate Liquor	Up to 1.0 micrograms/gram
Cocoa Butter	Up to 0.1 micrograms/gram

25 **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
 26 Level” shall be measured in micrograms, and shall be calculated using the following formula:
 27 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
 28 product (using the largest serving size appearing on the product label), multiplied by servings

1 of the product per day (using the largest number of recommended daily servings appearing on
2 the label), which equals micrograms of cadmium exposure per day. If the label contains no
3 recommended daily servings, then the number of recommended daily servings shall be one.

4 **3.2 Clear and Reasonable Warnings**

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

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

11 DEFENDANTS shall use the phrase “cancer and” in the Warning if DEFENDANTS have
12 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
13 determined pursuant to the quality control methodology set forth in Section 3.4 or if
14 DEFENDANTS have reason to believe that another Proposition 65 chemical is present which may
15 require a cancer warning. Where the Warning is being provided for more than one endpoint
16 (cancer and reproductive toxicity) the Warning must include the name of one or more chemicals
17 (e.g., lead and cadmium) for each endpoint, unless the named chemical is listed as known to cause
18 both cancer and reproductive toxicity and has been so identified in the Warning. Accordingly, as
19 identified in the brackets, the Warning shall appropriately reflect whether there is lead or
20 cadmium, or both chemicals if required, present in each of the Covered Products.

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

28 The Warning shall be at least the same size as the largest of any other health or safety
warnings also appearing on its website or on the label or container of DEFENDANTS’ product

1 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. A symbol
2 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline
3 shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
4 word “**WARNING.**” No statements intended to or likely to have the effect of diminishing the
5 impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the
6 Warning. Further, no statements may accompany the Warning that state or imply that the source
7 of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

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

12 **3.3 Conforming Covered Products**

13 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
14 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level”
15 is no more than 4.1 micrograms of cadmium per day as determined by the quality control
16 methodology described in Section 3.4.

17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** Beginning within one year of the Effective Date, DEFENDANTS shall
19 arrange for lead and cadmium testing of the Covered Products, to determine whether they meet
20 the Conforming Covered Products definition listed above, at least once a year for a minimum of
21 three consecutive years by arranging for testing of three randomly selected samples of each of
22 the Covered Products, in the form intended for sale to the end-user, which DEFENDANTS
23 intend to sell or are manufacturing for sale in California, directly selling to a consumer in
24 California or “Distributing into the State of California.” If tests conducted pursuant to this
25 Section demonstrate that no Warning is required for a Covered Product during each of three
26 consecutive years, then the testing requirements of this Section will no longer be required as to
27 that Covered Product.

1 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
2 “Daily Cadmium Exposure Level,” the average lead and/or cadmium detection result of the three
3 (3) randomly selected samples of the Covered Products will be controlling.

4 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
5 laboratory method that complies with the performance and quality control factors appropriate
6 for the method used, including limit of detection, qualification, accuracy, and precision that
7 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
8 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

9 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
10 independent third party laboratory certified by the California Environmental Laboratory
11 Accreditation Program or an independent third-party laboratory that is registered with the
12 United States Food & Drug Administration.

13 **3.4.5** Nothing in this Consent Judgment shall limit DEFENDANTS’ ability to
14 conduct, or require that others conduct, additional testing of the Covered Products, including
15 the raw materials used in their manufacture.

16 **3.4.6** Within thirty (30) days of ERC’s written request, DEFENDANTS shall
17 deliver lab reports obtained pursuant to Section 3.4 to ERC. DEFENDANTS shall retain all
18 test results and documentation for a period of three years from the date of each test. ERC shall
19 not request such lab reports more than once annually, absent good cause to do so.

20 **3.4.7** No testing shall be required for a Covered Product which continuously and
21 without interruption after the Effective Date (a) includes a Warning compliant with Section 3.2,
22 (b) is not being manufactured, (c) is not sold in California, manufactured for sale in California or
23 distributed in California, (d) is not shipped to a California shipping address, or (e) is merely
24 transshipped through California (i.e., remains unopened) to a retailer or distributor outside of
25 California that does not sell that particular Covered Product to persons or entities inside of
26 California. The burden shall be on DEFENDANTS to provide documentation proving
27 entitlement to the testing exceptions covered by this Section 3.4.7 within thirty (30) days of
28

1 ERC's written request. ERC shall not request such documentation more than once annually,
2 absent good cause to do so.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
5 attorney's fees, and costs, DEFENDANTS shall make a total payment of \$197,498.23 ("Total
6 Settlement Amount") according to the following payment schedule (the "Periodic Payments"):

- 7 • Payment 1 -- \$75,000.00 within 21 days of the Effective Date ("Due Date").
- 8 • Payment 2 -- \$10,208.19 within 30 days of the Effective Date (Due Date").
- 9 • Payment 3 -- \$10,208.19 within 60 days of the Effective Date (Due Date").
- 10 • Payment 4 -- \$10,208.19 within 90 days of the Effective Date (Due Date").
- 11 • Payment 5 -- \$10,208.19 within 120 days of the Effective Date (Due Date").
- 12 • Payment 6 -- \$10,208.19 within 150 days of the Effective Date (Due Date").
- 13 • Payment 7 -- \$10,208.19 within 180 days of the Effective Date (Due Date").
- 14 • Payment 8 -- \$10,208.19 within 210 days of the Effective Date (Due Date").
- 15 • Payment 9 -- \$10,208.19 within 240 days of the Effective Date (Due Date").
- 16 • Payment 10 -- \$10,208.19 within 270 days of the Effective Date (Due Date").
- 17 • Payment 11 -- \$10,208.19 within 300 days of the Effective Date (Due Date").
- 18 • Payment 12 -- \$10,208.19 within 330 days of the Effective Date (Due Date")
- 19 • Payment 13 -- \$10,208.14 within 360 days of the Effective Date (Due Date").

20 **4.2** DEFENDANTS shall make the Periodic Payments by wire transfer to ERC's
21 account, for which ERC will give DEFENDANTS the necessary account information. The Total
22 Settlement Amount shall be apportioned as follows:

23 **4.3** \$75,000.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$56,250.00) of the civil penalty to
25 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
27 Code section 25249.12(c). ERC will retain the remaining 25% (\$18,750.00) of the civil
28 penalty.

1 **4.4** \$9,593.79 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 **4.5** \$90,796.38 shall be distributed to Adams Broadwell Joseph & Cardozo as
4 reimbursement of ERC's attorney's fees, while \$22,108.06 shall be distributed to ERC for its
5 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
6 costs.

7 **4.6** In the event that DEFENDANTS fail to remit any of the Periodic Payments
8 owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date,
9 DEFENDANTS shall be deemed to be in material breach of their obligations under this
10 Consent Judgment. ERC shall provide written notice of the delinquency to DEFENDANTS via
11 electronic mail and regular mail pursuant to Paragraph 11 herein. If DEFENDANTS fail to
12 deliver the delinquent payment within ten (10) days from the date of delivery of the written
13 notice, the DEFENDANTS shall be required to pay a late fee, amounting to 10% of the
14 delinquent payment, in addition to the delinquent payment. If DEFENDANTS fail to deliver
15 the delinquent payment and late fee, if required, within thirty (30) days from the date of
16 delivery of the written notice, the Total Settlement Amount, less any amounts previously paid
17 to ERC, shall be immediately due and owing and shall accrue interest at the statutory judgment
18 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
19 DEFENDANTS agree to pay ERC's reasonable attorney's fees and costs for any efforts to
20 collect the payment(s) due under this Consent Judgment.

21 **5. MODIFICATION OF CONSENT JUDGMENT**

22 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
23 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
24 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
25 modified consent judgment.

26 **5.2** If any Party seeks to modify this Consent Judgment under Section 5.1, then that
27 Party must provide written notice to the other Party of its intent ("Notice of Intent"). The
28 Parties shall meet and confer in good faith regarding the proposed modification within sixty

1 (60) days of the receiving Party's receipt of the Notice of Intent. Within thirty (30) days of the
2 meet and confer conference, if the Parties are not able to fully resolve the issues regarding the
3 proposed modification, the Party disputing the modification shall provide the other party with a
4 written basis for its position. The Parties shall continue to meet and confer for an additional
5 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the
6 Parties may agree in writing to different deadlines for the meet-and-confer period.

7 **5.3** In the event that DEFENDANTS initiate or otherwise request a modification
8 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
9 modification of the Consent Judgment, DEFENDANTS shall reimburse ERC its costs and
10 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
11 arguing the motion or application. ERC shall not be reimbursed for costs or attorney's fees for
12 an uncontested motion, or for a ministerial motion (such as a change in name or contact
13 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
14 motion.

15 **5.4** Where the meet-and-confer process does not lead to a joint motion or
16 application in support of a modification of the Consent Judgment, then either Party may seek
17 judicial relief on its own.

18 **5.5** In the event that Proposition 65 is repealed, and as a result of such repeal the
19 Covered Products are no longer subject to Proposition 65, then DEFENDANTS shall have no
20 further obligation as to injunctive terms pursuant to this Consent Judgment with respect to the
21 Covered Products.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
23 **JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
25 this Consent Judgment.

26 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
27 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
28 inform DEFENDANTS in a reasonably prompt manner pursuant to Paragraph 11 herein of its

1 actual test results ERC received from an independent third party laboratory certified by the
2 California Environmental Laboratory Accreditation Program or an independent third-party
3 laboratory that is registered with the United States Food & Drug Administration, including
4 information sufficient to permit DEFENDANTS to identify the Covered Products at issue, and
5 of ERC's calculation of the Daily Lead Exposure Level. DEFENDANTS shall, within thirty
6 (30) days following such notice, provide ERC with testing information, from an independent
7 third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating
8 DEFENDANTS' compliance with the Consent Judgment. The Parties shall first attempt to
9 resolve the matter prior to ERC taking any further legal action.

10 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

18 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
19 on behalf of itself and in the public interest, and DEFENDANTS and their respective past,
20 present and future officers, directors, shareholders, employees, agents, representatives,
21 attorneys, accountants, insurers, receivers, advisors, consultants, partners, third-party vendors,
22 partnerships, members, divisions, assigns, agents, independent contractors, successors, heirs,
23 predecessors in interest, joint ventures, commonly-controlled corporations, holding companies,
24 controlling entities, sister companies, parent companies, subsidiaries, affiliated entities within
25 the same corporate family or under common ownership, divisions, suppliers, franchisees,
26 licensees, customers (not including private label customers of DEFENDANTS), distributors,
27 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
28 of any Covered Product, and related or affiliated companies, subsidiaries, predecessors,

1 successors, and assigns of any of them, (hereinafter collectively referred to as “Released
2 Parties”) with regard to the Covered Products. ERC, on behalf of itself and in the public
3 interest, hereby fully releases and discharges the Released Parties from any and all claims,
4 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
5 expenses asserted, or that could have been asserted, from the handling, use, or consumption of
6 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
7 regulations arising from the failure to provide Proposition 65 warnings on the Covered
8 Products regarding lead and/or cadmium up to and including the Effective Date.

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

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

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

27 ERC on behalf of itself only, and DEFENDANTS on behalf of themselves only, acknowledge
28 and understand the significance and consequences of this specific waiver of California Civil

1 Code section 1542.

2 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
3 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
4 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

5 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
6 environmental exposures arising under Proposition 65, nor shall it apply to any of the
7 DEFENDANTS' products other than the Covered Products.

8 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

11 **10. GOVERNING LAW**

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

14 **11. PROVISION OF NOTICE**

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

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

19 CHRIS HEPTINSTALL, Executive Director
20 ENVIRONMENTAL RESEARCH CENTER, INC.
21 3111 Camino Del Rio North, Suite 400
22 San Diego, CA 92108
23 Ph: (619) 500-3090
24 Email: chris.heptinstall@erc501c3.org

25 With a copy to:

26 TANYA A. GULESSERIAN
27 CHRISTINA M. CARO
28 ADAMS BROADWELL JOSEPH & CARDOZO
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080-7037
Telephone: (650) 589-1660
Fax No.: (650) 589-5062
Email: tgulesserian@adamsbroadwell.com/ccaro@adamsbroadwell.com

1 **FOR NUTRAKEY, LLC and MACROCAP LABS, INC.:**

2 CHRIS WAGNER
3 MACROCAP LABS, INC.
4 NUTRAKEY, LLC
5 975 Bennett Dr
6 Longwood, FL 32750
7 Email: chris@nutrakeyhealth.com

8 and

9 RICHARD D. MCINTYRE
10 LM ADVISORY GROUP
11 1540 International Parkway, Suite 2000
12 Lake Mary, FL 32746
13 Telephone: (407) 536-5346
14 Fax No.: (407) 442-3018
15 Email: rdm@lm-advisory.com

16 With a copy to:

17 HANY S. FANGARY
18 FANGARY LAW GROUP
19 U.S. Bank Tower | 633 West Fifth Street
20 57th Floor, Suite 5710, Los Angeles, CA 90071
21 Telephone: (213) 623-3822
22 Fax: (213) 289-2824
23 Email: Hany@fangaryl.com

24 **12. COURT APPROVAL**

25 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
26 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
27 Consent Judgment.

28 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible,
prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

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

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

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

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

22 **17. ENTIRE AGREEMENT, AUTHORIZATION**

23 **17.1** This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter herein, and any and all
25 prior discussions, negotiations, commitments, and understandings related hereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein have
27 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
28 herein, shall be deemed to exist or to bind any Party.

1 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

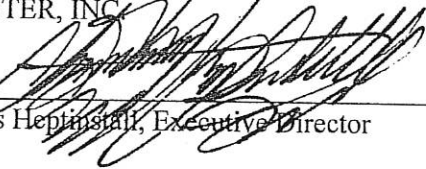
8 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
9 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
10 been diligently prosecuted, and that the public interest is served by such settlement; and

11 (2) Make the findings pursuant to California Health and Safety Code section
12 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

13
14 **IT IS SO STIPULATED:**


15 Dated: 8/19/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

16
17 By: 
18 Chris Heptinstall, Executive Director

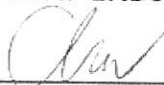
19
20 Dated: August 16, 2019

NUTRAKEY, LLC

21 By: 
22 Its: Christopher P. Wagner
23 President

1 Dated: August 16, 2019

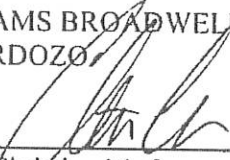
MACROCAP LABS, INC.

2
3 By: 
4 Its: Christopher P. Wagner
5 President

6 **APPROVED AS TO FORM:**

7 Dated: August 19, 2019

8 ADAMS BROADWELL JOSEPH &
9 CARDOZO

10 By: 
11 Christina M. Caro
12 Attorney for Plaintiff Environmental
13 Research Center, Inc.

14 Dated: August 16, 2019

FANGARY LAW GROUP

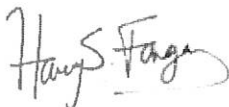
15 
16 By: _____
17 Hany S. Fangary
18 Attorney for DEFENDANTS
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

ccaro@adamsbroadwell.com

MILA A. BUCKNER
DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
COLLIN S. MCCARTHY
LINDA T. SOBCZYNSKI

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

May 10, 2018

VIA CERTIFIED MAIL

Chris Wagner or Current CEO
NutraKey, LLC
975 Bennett Drive
Longwood, FL 32750

Richard McIntyre, Esquire
(Registered Agent for NutraKey, LLC)
1540 International Parkway, Suite 2000
Lake Mary, FL 32746

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA ELECTRONIC MAIL

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

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

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

VIA ELECTRONIC MAIL

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

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

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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 10, 2018
Page 2

VIA ELECTRONIC MAIL

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

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

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

VIA ELECTRONIC MAIL

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

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

VIA FIRST CLASS MAIL

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

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

Dear Addressees:

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

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

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

NutraKey, LLC

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

1. **N NutraKey Iso Optima With Hydrolyzed Whey Protein Isolate Chocolate Ice Cream Swirl - Lead**
2. **N NutraKey Health Performance Inc. Hydro Pump Strawberry Lemonade - Lead**
3. **N NutraKey Health Performance Inc. Hydro Pump Cotton Candy - Lead**
4. **N NutraKey Health Performance Inc. Hydro Pump - Lead**
5. **N NutraKey Whey Optima Premium Protein Complex Chocolate Lava Cake - Lead**
6. **N NutraKey Whey Optima Premium Protein Complex Cookies & Cream - Lead**
7. **N NutraKey Raw Plant Protein VPro Vanilla - Lead**
8. **N NutraKey Raw Plant Protein VPro Vegan Mochaccino - Lead**
9. **N NutraKey Health Performance Inc. Spirulina Antioxidant Superfood - Lead**
10. **N NutraKey Health Performance Inc. Antler Test Strength & Muscle Builder - Lead**
11. **N NutraKey Whey Optima Premium Protein Complex Salted Caramel Peanut Butter Cup - Lead**
12. **N NutraKey Whey Optima Premium Protein Complex Vanilla Ice Cream Cookie - 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.

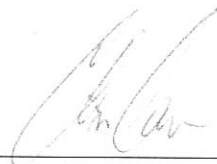
This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since May 10, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time-consuming litigation.

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

Sincerely,



Christina M. Caro

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraKey, LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by NutraKey, LLC**

I, Christina Caro, declare:

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

Dated: May 10, 2018



Christina M. Caro

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 10, 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 May 10, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chris Wagner or Current CEO
NutraKey, LLC
975 Bennett Drive
Longwood, FL 32750

Richard McIntyre, Esquire
(Registered Agent for NutraKey, LLC)
1540 International Parkway, Suite 2000
Lake Mary, FL 32746

On May 10, 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 May 10, 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

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

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

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

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

May 10, 2018

Page 7

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

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

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
San Luis Obispo County
County Government Center Annex, 4th Floor
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

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

May 10, 2018

Page 8

On May 10, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 10, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, reading "Phyllis Dunwoody". The signature is written in a cursive style with a large, looped "P" and "D".

Phyllis Dunwoody

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

May 10, 2018

Page 9

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

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Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
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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
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Nevada City, CA 95959

District Attorney, Orange County
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Santa Ana, CA 92701

District Attorney, Placer County
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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
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District Attorney, San Diego County
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District Attorney, Trinity County
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District Attorney, Tuolumne County
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Sonora, CA 95370

District Attorney, Yuba County
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Marysville, CA 95901

Los Angeles City Attorney's Office
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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

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

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

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

EXHIBIT B

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

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MARC D. JOSEPH
RACHAEL E. KOSS
COLLIN S. McCARTHY
LINDA T. SOBCZYNSKI

July 11, 2018

VIA CERTIFIED MAIL

Chris Wagner or Current CEO
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Longwood, FL 32750

Richard McIntyre, Esquire
(Registered Agent for NutraKey, LLC)
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Lake Mary, FL 32746

VIA ONLINE SUBMISSION

Office of the California Attorney General

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
July 11, 2018
Page 2

VIA ELECTRONIC MAIL

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301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

VIA FIRST CLASS MAIL

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

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

Dear Addressees:

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

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

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

NutraKey, LLC

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

1. **N NutraKey Health Performance Inc. Garcinia Cambogia with White Kidney Bean Extract Fat Loss & Metabolism - Lead**
2. **N NutraKey Health Performance Inc. Tribulus Pure Terrestris Strength & Performance - Lead**
3. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Rainbow - Lead**
4. **N Nutrakey Health Performance Inc. Garcinia Cambogia Fat Loss & Metabolism - Lead**
5. **N Nutrakey Inc Health Performance Tone Complex Fat Loss & Metabolism - Lead**
6. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Blue Rock Candy - Lead**
7. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Sour Gummy Worms - Lead**
8. **N NutraKey Tru Pre Precision Formulated Pre-Workout Tahitian Fruit Punch - Lead**
9. **N NutraKey Raw Plant Protein VPro Vegan Chocolate – Lead, Cadmium**
10. **N NutraKey Raw Plant Protein VPro Vegan Vanilla Cookies - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
July 11, 2018
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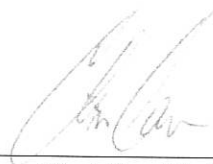
summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since July 11, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

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

Sincerely,



Christina M. Caro

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraKey, LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by NutraKey, LLC**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 11, 2018



Christina M. Caro

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 11, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chris Wagner or Current CEO
NutraKey, LLC
975 Bennett Drive
Longwood, FL 32750

Richard McIntyre, Esquire
(Registered Agent for NutraKey, LLC)
1540 International Parkway, Suite 2000
Lake Mary, FL 32746

On July 11, 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 11, 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
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

July 11, 2018

Page 7

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
July 11, 2018
Page 8

On July 11, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on July 11, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in cursive script, reading "Phyllis Dunwoody". The signature is written in black ink and is positioned above a horizontal line.

Phyllis Dunwoody

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

July 11, 2018

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Service List

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District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991
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District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 95317	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
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District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	

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?

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

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

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 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.

² See 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.

EXHIBIT C

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Of Counsel

March 6, 2019

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Richard McIntyre, Esquire
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 6, 2019
Page 3

VIA FIRST CLASS MAIL

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

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

Dear Addressees:

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

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

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

NutraKey, LLC

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

- 1. N NutraKey Raw Plant Protein Vpro Vegan Natural - Lead**
- 2. N NutraKey Vegan Vpro Raw Plant Protein Chocolate Bar – Lead, 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.

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

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

March 6, 2019

Page 4

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since March 6, 2016, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

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

Sincerely,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to NutraKey, LLC and its Registered Agent for Service of Process only)

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

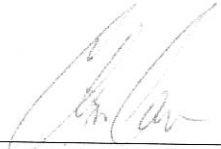
CERTIFICATE OF MERIT

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

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: March 6, 2019



Christina M. Caro

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 6, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Chris Wagner or Current CEO
NutraKey, LLC
975 Bennett Drive
Longwood, FL 32750

Richard McIntyre, Esquire
(Registered Agent for NutraKey, LLC)
1540 International Parkway, Suite 2000
Lake Mary, FL 32746

On March 6, 2019, 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 March 6, 2019, 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:

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

March 6, 2019

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 6, 2019
Page 8

Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

On March 6, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on March 6, 2019, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 6, 2019

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Service List

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Marysville, CA 95901

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Los Angeles, CA 90012

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?

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

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

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 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.

² See 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.

EXHIBIT D

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Of Counsel

March 18, 2019

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Chris Wagner
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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Page 2

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 18, 2019
Page 3

VIA FIRST CLASS MAIL

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

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

Dear Addressees:

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

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

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

MacroCap Labs, Inc.

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

1. **N NutraKey Iso Optima With Hydrolyzed Whey Protein Isolate Chocolate Ice Cream Swirl - Lead**
2. **N NutraKey Health Performance Inc. Hydro Pump Strawberry Lemonade - Lead**
3. **N NutraKey Health Performance Inc. Hydro Pump Cotton Candy - Lead**
4. **N NutraKey Health Performance Inc. Hydro Pump - Lead**
5. **N NutraKey Whey Optima Premium Protein Complex Chocolate Lava Cake - Lead**
6. **N NutraKey Whey Optima Premium Protein Complex Cookies & Cream - Lead**
7. **N NutraKey Raw Plant Protein VPro Vanilla - Lead**
8. **N NutraKey Raw Plant Protein VPro Vegan Mochaccino - Lead**
9. **N NutraKey Health Performance Inc. Spirulina Antioxidant Superfood - Lead**
10. **N NutraKey Health Performance Inc. Antler Test Strength & Muscle Builder - Lead**
11. **N NutraKey Whey Optima Premium Protein Complex Salted Caramel Peanut Butter Cup - Lead**
12. **N NutraKey Whey Optima Premium Protein Complex Vanilla Ice Cream Cookie - Lead**
13. **N NutraKey Health Performance Inc. Garcinia Cambogia with White Kidney Bean Extract Fat Loss & Metabolism - Lead**

14. **N NutraKey Health Performance Inc. Tribulus Pure Terrestris Strength & Performance - Lead**
15. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Rainbow - Lead**
16. **N Nutrakey Health Performance Inc. Garcinia Cambogia Fat Loss & Metabolism - Lead**
17. **N Nutrakey Inc Health Performance Tone Complex Fat Loss & Metabolism - Lead**
18. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Blue Rock Candy - Lead**
19. **N Nutrakey Tru PRE Precision Formulated Pre-Workout Sour Gummy Worms - Lead**
20. **N NutraKey Tru Pre Precision Formulated Pre-Workout Tahitian Fruit Punch - Lead**
21. **N NutraKey Raw Plant Protein VPro Vegan Chocolate – Lead, Cadmium**
22. **N NutraKey Raw Plant Protein VPro Vegan Vanilla Cookies - Lead**
23. **N NutraKey Raw Plant Protein Vpro Vegan Natural - Lead**
24. **N NutraKey Vegan Vpro Raw Plant Protein Chocolate Bar – Lead, 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.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since March 18, 2016, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 18, 2019
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identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

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

Sincerely,



Christina M. Caro

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to MacroCap Labs, Inc. 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
MacroCap Labs, Inc.**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: March 18, 2019



Christina M. Caro

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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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 March 18, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Christopher Wagner or Current CEO
MacroCap Labs, Inc.
975 Bennett Drive
Longwood, FL 32750

Chris Wagner
(Registered Agent for MacroCap Labs, Inc.)
975 Bennett Drive
Longwood, FL 32750

On March 18, 2019, 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 March 18, 2019, 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:

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 18, 2019
Page 9

On March 18, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on March 18, 2019, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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

March 18, 2019

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Service List

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: Jan 30, 2019²⁰



Honorable Michael Markman
Judge of the Superior Court

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