Michael Freund & Associates

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Michael Freund, Esq. Ryan Hoffman, Esq.

OF COUNSEL: **Denise Ferkich Hoffman,** Esq.

December 16, 2015

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

<u>General Information about Proposition 65</u>. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

<u>Alleged Violator</u>. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Total Life Changes, LLC

<u>Consumer Products and Listed Chemical</u>. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. AIM Food Manufacturing Total Life Changes LLC iaso Café Latin Style Lead
- 2. Total Life Changes LLC iaso Café Delgada Lead
- 3. Total Life Changes LLC iaso Techui Lead
- 4. Total Life Changes LLC iaso NRG Lead

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

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

<u>Route of Exposure</u>. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this

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chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 16, 2012, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,

Mital Freund

Michael Freund

Attachments

Certificate of Merit Certificate of Service OEHHA Summary (to Total Life Changes, 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 Total Life Changes, LLC

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: December 16, 2015

Michael Freund

Michael Freund

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. 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 December 16, 2015, I served the following documents: NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ*.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY" on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO Total Life Changes, LLC 9453 Marine City Highway Ira, MI 48023

Current President or CEO Total Life Changes, LLC 6094 Corporate Drive Ira, MI 48023 Current President or CEO Total Life Changes, LLC 7940 Cherry Avenue, Suite 201 Fontana, CA 92336

Jack Fallon (Total Life Changes, LLC's Registered Agent for Service of Process) 9453 Marine City Highway Ira, MI 48023

On December 16, 2015, 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 December 16, 2015, 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 the party listed below:

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

Michelle Latimer, Program Coordinator 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us Gary Lieberstein, District Attorney 931 Parkway Mall Napa, CA 94559 CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org Notice of Violation of California Health & Safety Code §25249.5 *et seq.* December 16, 2015 Page 5

Gregory Alker, Assistant District Attorney 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org

Yen Dang, Supervising Deputy District Attorney 70 W Hedding St San Jose, CA 95110 EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney 600 Administration Dr Sonoma, CA 95403 jbarnes@sonoma-county.org Phillip J. Cline, District Attorney 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us

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

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

On December 16, 2015, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5** *ET SEQ.*; **CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on December 16, 2015, in Fort Oglethorpe, Georgia.

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Phyllis Dunwoody

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120

District Attorney, Amador County 708 Court Street 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 230 W. Line Street Bishop, CA 93514

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 210 West Temple Street, Suite 18000 Los Angeles, CA 90012

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

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

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

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

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

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

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

District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902

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

District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701 District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678

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

District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814

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

District Attorney,San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004

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

District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202

District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408

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

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

District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060

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

District Attorney, Sierra County PO Box 457 Downieville, CA 95936 District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097

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

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

District Attorney, Sutter County 446 Second Street Yuba City, CA 95991

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

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

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

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

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

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

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

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