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March 18, 2019

VIA CERTIFIED MAIL

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Chris Wagner
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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.*

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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

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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

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.*

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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.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Phyllis Dunwoody

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