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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA
15

16 ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,

17 Plaintiff,

18 v.

19 USPlabs, LLC,

20 Defendants.
21

CASE NO. RG13684589

[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: June 21, 2013
Trial Date: [None Set]

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26 **I. INTRODUCTION**

27 **1.1** On June 21, 2013, Plaintiff Environmental Research Center ("ERC" or "Plaintiff"),
28 a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint")
2 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
3 ("Proposition 65"), against USPlabs, LLC ("USP" or "Defendant"). In this action, ERC alleges
4 that the products manufactured, distributed or sold by USP, as more fully described below, contain
5 lead and/or arsenic, chemicals listed under Proposition 65 as carcinogens and reproductive toxins,
6 and that such products expose consumers at a level requiring a Proposition 65 warning. These
7 products are: USP Labs PowerFULL; USP Labs Recreate Clinical Strength Fat Loss; USP Labs
8 PRIME The Ultimate Muscle Pill; USP Labs Super Cissus RX; USP Labs LLC Pink Magic; USP
9 Labs OxyElite Protein Powder Milk Chocolate; and USP Labs OxyElite Protein Powder Vanilla
10 Ice Cream (collectively, the "Covered Products"). ERC and USP are referred to individually as a
11 "Party" or collectively as the "Parties."

12 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
13 helping safeguard the public from health hazards by reducing the use and misuse of hazardous and
14 toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging
15 corporate responsibility.

16 1.3 USP is a business entity that employed ten or more persons at all times relevant to
17 this action. USP arranges the manufacture, distribution and sale of the Covered Products.

18 1.4 The Complaint is based on allegations contained in ERC's Notices of Violation,
19 dated September 4, 2010, October 8, 2010, November 23, 2010, January 14, 2011, and January 10,
20 2014 that were served on the California Attorney General, other public enforcers, and USP. True
21 and correct copies of the Notices of Violation are attached as Exhibit A. No designated
22 governmental entity has filed a complaint against USP with regard to the Covered Products or the
23 alleged violations.

24 1.5 ERC's Notices of Violation and the Complaint allege that use of the Covered
25 Products exposes persons in California to lead and/or arsenic without first providing clear and
26 reasonable warnings in violation of California Health and Safety Code section 25249.6. USP
27 denies all material allegations contained in the Notices of Violation and Complaint and asserts that
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1 any detectible levels of lead in the Covered Products are the result of naturally occurring lead
2 levels, as provided for in California Code of Regulations, Title 27, Section 25501(a).

3 **1.6** The Parties have entered into this Consent Judgment in order to settle, compromise
4 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
5 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any
6 of their respective officers, directors, shareholders, employees, agents, parent companies,
7 subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers, distributors,
8 wholesalers, or retailers. Except for the representations made above, nothing in this Consent
9 Judgment shall be construed as an admission by USP or ERC of any fact, issue of law, or violation
10 of law, nor shall compliance with this Consent Judgment be construed as an admission by USP or
11 ERC of any fact, issue of law, or violation of law, at any time, for any purpose.

12 **1.7** Subsequent to receiving ERC's Notice of Violation, USP has made efforts to
13 reduce consumer exposure to lead, by developing and utilizing a proprietary technique to
14 significantly reduce the lead it claims to be natural occurring in the Covered Products. USP has
15 also discontinued for sale nationwide two Covered Products, namely USP Labs LLC Pink Magic
16 and USP Labs Recreate Clinical Strength Fat Loss. USP reserves its right to resume such sales
17 any place in the United States including specifically in California. Except as expressly set forth
18 herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
19 argument, or defense the Parties may have in any other or future legal proceeding unrelated to
20 these proceedings.

21 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as a
22 Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
26 over USP as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that
27 this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
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1 claims which were or could have been asserted in his action based on the facts alleged in the
2 Notices of Violation and the Complaint.

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

4 **3.1** Beginning on the Effective Date, USP shall not manufacture for sale in the State of
5 California, distribute¹ into the State of California, or directly sell in the State of California, any
6 Covered Products which expose a person to a daily dose of lead more than 0.5 micrograms per day
7 when the maximum suggested dose is taken as directed on the Covered Product's label, unless
8 each such unit of the Covered Product (1) qualifies as a "Reformulated Covered Product" under
9 Section 3.3, or (2) meets the warning requirements under Section 3.2.

10 **3.2 Clear and Reasonable Warnings**

11 If USP provides a warning for Covered Products pursuant to Section 3.1, USP must provide one of
12 the following warnings (the "Warning"), including the name of the chemical, depending on how
13 many Proposition 65-listed chemicals have been shown to exceed their allowable thresholds in the
14 Covered Product through laboratory testing:

15 If only lead or another single chemical exceeds the allowable threshold, USP must
16 provide the following warning:

17 [California Proposition 65] **WARNING: This product contains, a chemical**
18 **known to the State of California to cause [cancer and] birth defects or other**
19 **reproductive harm.**

20 If two or more chemicals exceed the allowable thresholds, USP must provide the
21 following warning, naming each chemical:

22 [California Proposition 65] **WARNING: This product contains chemicals**
23 **known to the State of California to cause [cancer and] birth defects or other**
24 **reproductive harm.**

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27 ¹ As used in this Consent Judgment, the term "distribute into the State of California" shall mean to directly
28 ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that
Defendant knows will sell the Covered Product in California.

1 USP shall use the term "cancer" in the Warning only if the maximum daily dose recommended on
2 the label contains more than 15 micrograms of lead as determined pursuant to the quality control
3 methodology set forth in Section 3.4. The bracketed language, "California Proposition 65," may
4 be included at USP's option. The word "WARNING" shall be in all capital letters and in bold
5 print.

6 USP shall provide the Warning on all the Covered Products. No other language regarding
7 Proposition 65, lead, arsenic or any other chemical shall accompany the Warning, and USP shall
8 not provide any general or "blanket" warnings regarding Proposition 65.

9 USP must display the above warnings with such conspicuousness, as compared with other
10 words, statements, or design of the label or container, to render the Warning likely to be read and
11 understood by an ordinary individual under customary conditions of purchase or use of the
12 product.

13 3.3 Calculation of Lead Levels; Reformulated Covered Products

14 For purposes of calculating lead content, USP may exclude the sum of the amount of lead
15 supplied by the quantity of each ingredient listed in Table 1 that is present in the maximum daily
16 serving recommended on the label of the Covered Product. For each ingredient, the amount of
17 lead that may be excluded in each ingredient in each Covered Product is set forth in Table 1. If
18 USP uses this calculation, then USP must submit to ERC, prior to the Effective Date, a complete
19 list showing all the ingredients, including ingredients from Table 1, that are being used in a
20 Covered Product, the percentage and amount in grams of each ingredient being used in the overall
21 Covered Product, and data that independently confirm the percentage of each ingredient in the
22 Covered Product using the maximum daily serving recommended by USP. USP may update this
23 list from time to time. USP will be entitled to submit this information to ERC confidentially. In
24 the event that a dispute arises with respect to compliance with the terms of this Consent Judgment
25 as to any contribution from naturally occurring lead levels under this Section, ERC and USP shall
26 employ good faith efforts to seek entry of a protective order that governs access to and disclosure
27 of the information provided confidentially by USP to ERC in any litigation or proceeding, before
28 any such information is disclosed by ERC in connection with that litigation or proceeding.

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TABLE 1

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	0.8 mcg lead per gram of elemental calcium
Ferrous Fumarate	0.4 mcg lead per gram of ferrous fumarate
Zinc Oxide	8.0 mcg lead per gram of zinc oxide
Magnesium Oxide	0.4 mcg lead per gram of magnesium oxide
Potassium Chloride	1.1 mcg lead per gram of potassium chloride
Cocoa powder	1.0 mcg lead per gram of cocoa powder

A Reformulated Covered Product is one for which the maximum recommended daily serving on the label contains no more than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4. As used in this Consent Judgment, "no more than 0.5 micrograms of lead per day" means that the samples of the testing performed by USP under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead (with daily exposure calculated pursuant to Section 3.4 of this Consent Judgment). For products that cause exposures in excess of 0.5 micrograms of lead per day, USP shall provide one of the warnings set forth in Section 3.2. For purposes of determining which warning, if any, is required pursuant to Section 3.2, the second highest lead detection result of at least four (4) random samples from at least four (4) random lots for each Covered Product shall be used as set forth in Section 3.4 hereof.

3.4 Testing and Quality Control Methodology

3.4.1 For purposes of this Consent Judgment and determining USP's compliance with Proposition 65, for the PowerFULL; Recreate Clinical Strength Fat; PRIME The Ultimate Muscle Pill; Super Cissus RX; and Pink Magic the daily lead exposure levels shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals

1 micrograms of lead exposure per day. For purposes of this Consent Judgment and determining
2 USP's compliance with Proposition 65, for all flavors of the OxyElite Protein Powder or other
3 branded protein powder of the same ingredients, the daily lead exposure levels shall be calculated
4 using the following formula: micrograms of lead per gram of product, multiplied by 10 grams of
5 product, multiplied by one serving per day, which equals micrograms of lead exposure per day, as
6 long as USP's product label provides no recommended number of servings and states the number
7 of grams of the product only under "nutritional facts" or "supplement facts".

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9 3.4.2 All testing pursuant to this Consent Judgment shall be performed using a
10 laboratory method that complies with the performance and quality control factors appropriate for
11 the method used, including limit of detection, limit of qualification, accuracy, and precision and
12 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
13 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method
14 subsequently agreed upon in writing by the Parties.

15 3.4.3 All testing pursuant to this Consent Judgment shall be performed by an
16 independent third-party laboratory certified by the California Environmental Laboratory
17 Accreditation Program or an independent third-party laboratory that is approved by, accredited by,
18 or registered with the United States Food & Drug Administration USP may perform all testing
19 pursuant to this Consent Judgment itself only if i) USP is a qualified laboratory as described
20 above, and ii) USP provides to ERC written proof of such qualification prior to testing and
21 attaches such proof to its test results every year. Nothing in this Consent Judgment shall limit
22 USP's ability to conduct, or require that others conduct, additional testing of the Covered
23 Products, including the raw materials used in their manufacture.

24 3.4.4 USP shall arrange, for at least four consecutive years and at least once per
25 year, for the lead testing of at least four (4) random samples from at least four (4) random lots for
26 each Covered Product in the form intended for sale to the end-user to be distributed or sold to
27 California. USP shall continue testing so long as the Covered Products are sold in California or
28 sold to a third-party for retail sale in California. If tests conducted pursuant to this Section

1 demonstrate that no warning is required for a Covered Product during each of four consecutive
2 years, then the testing requirements of this Section will no longer be required as to that Covered
3 Product. However, if after the four-year period, USP changes ingredient suppliers for any of the
4 Covered Products and/or reformulates any of the Covered Products, USP shall test that Covered
5 Product at least once after such change is made. The testing requirements discussed in Section 3.4
6 are not applicable to any Covered Product for which USP has provided the Warning as specified
7 in Section 3.2.

8 3.4.5 Beginning on the Effective Date and continuing for a period of four years
9 thereafter, USP shall arrange to keep and maintain copies of all laboratory reports on which it
10 relies for demonstrating that with respect to lead in the Covered Products it has met the
11 reproductive toxicity level of 0.5 micrograms of lead per day as set forth in Paragraph 3 hereof.
12 The purpose of keeping and maintaining such laboratory reports is so that USP may comply with
13 Paragraph 15 hereof. Should these reports be provided to ERC under Paragraph 15 hereof, they
14 shall be treated by ERC as confidential information under the terms of the confidentiality
15 agreement entered into by the Parties.

16 **4. SETTLEMENT PAYMENT**

17 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,
18 attorney's fees, and costs, USP shall make a total payment of \$150,000.00 by checks payable in
19 four equal monthly payments starting within ten business days of receiving the Notice of Entry of
20 Judgment as set forth in Paragraph 4.6 hereof. Said payments shall be apportioned as follows:

21 4.2 \$19,136.00 shall be payable as civil penalties pursuant to California Health and
22 Safety Code section 25249.7(b)(1). Of this amount, \$14,352.00 shall be paid to the Office of
23 Environmental Health Hazard Assessment ("OEHHA") and \$4,784.00 shall be paid to
24 Environmental Research Center. California Health and Safety Code section 25249.12(c)(I) & (d).
25 USP shall send both civil penalty payments to ERC's counsel who will be responsible for
26 forwarding the civil penalty.
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1 4.3 \$37,844.00 shall be paid to Environmental Research Center as reimbursement to
2 ERC for (A) reasonable costs associated with the enforcement of Proposition 65 and other costs
3 incurred as a result of work in bringing this action; and (B) \$57,410.50 shall be paid to
4 Environmental Research Center in lieu of further civil penalties, for the day-to-day business
5 activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing,
6 researching and testing consumer products that may contain Proposition 65 chemicals, focusing on
7 the same or similar type of ingestible products that are the subject matter of the current action;
8 (2) the continued monitoring of past consent judgments and settlements to ensure companies are in
9 compliance with Proposition 65; and (3) giving a donation by way of payment of \$2,871.00 to the
10 Woman's Voices For The Earth to address reducing toxic chemical exposures in California.

11 4.4 \$31,087.50 shall be paid to Michael Freund as reimbursement of ERC's attorney's
12 fees. \$2,047.00 shall be paid to Ryan Hoffman as reimbursement of ERC's attorney's fees.
13 \$2,475.00 shall be paid to Karen A. Evans as reimbursement of ERC's attorney's fees.

14 4.5 USP shall mail or deliver these payments, in the form of checks, to Michael Freund
15 and Associates, no later than 10 business days after USP's receipt of the Notice of Entry of
16 Judgment. USP will be provided with taxpayer identification information to enable USP to
17 process the payments.

18 4.6 Payment Schedule. USP agrees to remit the total amount of \$150,000.00 to ERC,
19 payable to the "Michael Freund Trust Fund" in four equal payments of \$37,500.00 by check and
20 remitted to the Law Office of Michael Freund at the law firm's address noted in the Notice
21 provision below. The schedule for the payment of these funds shall be a first payment of
22 \$37,500.00 received within 10 days of the Effective Date of this Consent Judgment, and a
23 \$37,500.00 payment to be received each month for three consecutive months thereafter. In the
24 event that any of the payments owed under this Consent Judgment is not remitted on or before its
25 due date, USP shall be deemed to be in default of its obligations under this Consent Judgment.
26 ERC shall provide written notice to USP of any default; if USP fails to remedy the default within
27 five business days of such notice, then all future payments due hereunder shall become
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1 immediately due and payable, with the prevailing federal funds rate applying to all interest
2 accruing on unpaid balances due hereunder, beginning on the due date of the funds in default.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only by written agreement and stipulation
5 of the Parties and upon entry of a modified Consent Judgment by the Court.

6 **5.2** If USP seeks to modify this Consent Judgment under Section 5.1, then USP must
7 provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and confer
8 regarding the proposed modification in the Notice of Intent, then ERC must provide written notice
9 to USP within thirty days of receiving the Notice of Intent. If ERC notifies USP in a timely
10 manner of ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
11 required in this Section. The Parties shall meet in person or by phone within thirty (30) days of
12 ERC's notification of its intent to meet and confer. Within thirty days of such meeting, if ERC
13 disputes the proposed modification, ERC shall provide to USP a written basis for its position. The
14 Parties shall continue to meet and confer for an additional thirty (30) days in an effort to resolve
15 any remaining disputes. The Parties may agree in writing to different deadlines for the meet-and-
16 confer period.

17 **5.3** In the event that USP initiates or otherwise requests a modification under
18 Section 5.1, USP shall reimburse ERC its costs and reasonable attorney's fees for the time spent in
19 filing and arguing a joint motion or application in support of a modification of the Consent
20 Judgment.

21 **5.4** Where the meet-and-confer process does not lead to a joint motion or application in
22 support of a modification of the Consent Judgment, then either Party may seek judicial relief on its
23 own. In such a situation, the prevailing party may seek to recover costs and reasonable attorney's
24 fees. As used in the preceding sentence, the term "prevailing party" means a party who is
25 successful in obtaining relief more favorable to it than the relief that the other party was amenable
26 to providing during the Parties' good faith attempt to resolve the dispute that is the subject of the
27 modification.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

2 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
3 this Consent Judgment.

4 **6.2** Only after it complies with Section 15 below may any Party, by motion or
5 application for an order to show cause filed with this Court, enforce the terms and conditions
6 contained in this Consent Judgment.

7 **7. APPLICATION OF CONSENT JUDGMENT**

8 This Consent Judgment is a full, final, and binding resolution between the Parties and then
9 respective officers, directors, shareholders, employees, agents, successors, and assigns. This
10 Consent Judgment shall have no application to Covered Products which are distributed or sold by
11 USP exclusively outside the State of California. This Consent Judgment shall terminate without
12 further action by any Party five years after the Effective Date.

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

14 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
15 behalf of itself and in the public interest, and USP, and its parents, subsidiaries, affiliated entities
16 that are under common ownership or common control, directors, officers, shareholders,
17 employees, attorneys, and agents ("Defendant Releasees") and each entity to whom they directly
18 or indirectly distribute or sell Covered Products, including but not limited to distributors,
19 wholesalers, retailers, (not including private label customers of USP), franchisees, cooperative
20 members, licensors, and licensees ("Downstream Defendant Releasees") (collectively
21 "Releasees") of any alleged violation of Proposition 65 or its implementing regulations for failure
22 to provide Proposition 65 warnings of exposure to lead and arsenic from the handling, use, or
23 consumption of the Covered Products and fully resolves all claims that have been or could have
24 been asserted in this action up to and including the Effective Date for failure to provide
25 Proposition 65 warnings for exposure to lead and arsenic from the Covered Products as set forth in
26 the Notices of Violation and the Complaint and for Oxy-Elite Protein Powder described in
27 Paragraph 3.4.1 hereof. ERC, on behalf of itself and in the public interest, hereby discharges USP
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1 and its Releasees from any claims of violations of Proposition 65 arising from the failure to
2 provide Proposition 65 warnings regarding lead and arsenic in the Covered Products as set forth in
3 the Notices of Violation and the Complaint and for Oxy-Elite Protein Powder.

4 8.2 ERC, on behalf of itself only, hereby releases and discharges the Releasees from all
5 known and unknown claims for alleged violations of Proposition 65 arising from or relating to
6 alleged exposures to lead, lead compounds, and arsenic in the Covered Products as set forth in the
7 Notice of Violation and in Oxy-Elite Protein Powder. It is possible that other claims not known to
8 the Parties arising out of the facts alleged in the Notice of Violation or the Complaint and relating
9 to the Covered Products and in Oxy-Elite Protein Powder will develop or be discovered. ERC, on
10 behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover and
11 include all such claims, including all rights of action therefore. ERC has full knowledge of the
12 contents of California Civil Code section 1542. ERC, on behalf of itself only, acknowledges that
13 the claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless
14 waives California Civil Code section 1542 as to any such unknown claims. California Civil Code
15 section 1542 reads as follows:

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

21 ERC, on behalf of itself only, acknowledges and understands the significance and consequences of
22 this specific waiver of California Civil Code Section 1542.

23 8.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute
24 compliance by any of the Releasees with Proposition 65 regarding alleged exposures to lead and
25 arsenic in the Covered Products as set forth in the Notices of Violation and that were and could
26 have been alleged in the Complaint and in Oxy-Elite Protein Powder.

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8.4 Nothing in this Consent Judgment is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of USP's products other than the Covered Products and Oxy-Elite Protein Powder.

8.5 ERC and USP each release and waive all claims they may have against each other for any statements or actions made or undertaken by them in connection with the Notice of Violation or the Complaint; provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

For ENVIRONMENTAL RESEARCH CENTER:

Chris Heptinstall, Executive Director
Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

With a copy to:

Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Email: freundl@aol.com

For USPlabs, LLC

1 Matt Hebert
USP Labs LLC
2 10761 King William Drive
Dallas, TX. 75220
3

4 **With a copy to:**

5 Arthur Fine
Mitchell Silberberg & Knupp LLP
6 11377 W. Olympic Blvd.
Los Angeles, CA 90064-1683
7 Telephone: (310) 312-3133
Email: abf@msk.com
8

9 **12. COURT APPROVAL**

10 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be void
11 and have no force or effect.

12 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(1) and
13 with Title II of the California Code Regulations, Section 3003.

14 **13. EXECUTION AND COUNTERPARTS**

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

18 **14. DRAFTING**

19 The terms of this Consent Judgment have been reviewed by the respective counsel for the each
20 Party to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss
21 the terms with counsel. The Parties agree that, in any subsequent interpretation and construction
22 of this Consent Judgment entered thereon, the terms and provisions shall not be construed against
23 any Party.

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

25 If a dispute arises with respect to either Party's compliance with the terms of this Consent
26 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
27 resolve the dispute in an amicable manner. If ERC alleges that any Covered Product fails to
28 qualify as a Reformulated Covered Product (and for which ERC alleges that no warning has been

1 provided) or that Oxy-Elite Protein Powder violates Proposition 65, then ERC shall inform USP in
2 a reasonably prompt manner of its test results, including information sufficient to permit USP to
3 identify the Covered Products or Oxy-Elite Protein Powder at issue. USP shall, within thirty days
4 following USP's receipt of such notice, provide ERC with testing information demonstrating
5 USP's compliance with this Agreement, if warranted. The Parties shall first attempt to resolve the
6 matter prior to ERC taking any further legal action. No action or motion may be filed in the
7 absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or
8 motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's
9 fees. As used in the preceding sentence, the term "prevailing party" means a party who is
10 successful in obtaining relief more favorable to it than the relief that the other party was amenable
11 to providing during the parties' good faith attempt to resolve the dispute that is the subject of such
12 enforcement action.

13 **16. ENTIRE AGREEMENT, AUTHORIZATION**

14 **16.1** This Consent Judgment contains the sole and entire agreement and understanding
15 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
16 negotiations, commitments and understandings related hereto. No representations, oral or
17 otherwise, express or implied, other than those contained herein have been made by any Party. No
18 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
19 or to bind any Party.

20 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
22 provided herein, each Party shall bear its own fees and costs.

23 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
24 **CONSENT JUDGMENT**

25 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
26 request the Court to fully review this Consent Judgment and, being fully informed regarding the
27 matters which are the subject of this action, to:
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28

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint and as to Oxy-Elite Protein Powder, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

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

IT IS SO STIPULATED:

Dated: _____, 2014

ENVIRONMENTAL RESEARCH CENTER

By: _____
Chris Heptinstall
Executive Director

Dated: _____, 2014

USPlabs, LLC

By: _____
Name:
Title:

APPROVED AS TO FORM:

Dated: 1/21, 2014

ENVIRONMENTAL RESEARCH CENTER

By: _____
Michael Freund
Attorney for Plaintiff

Dated: 1/21, 2014

USPlabs, LLC

By: Arthur Fine
Arthur Fine
Attorney for Defendant

JUDGMENT

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

Dated: _____, 2014

Judge of the Superior Court

Mitchell
Silberberg &
Knupp LLP

5756277.1

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

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

7 **IT IS SO STIPULATED:**

8 Dated: 1/21, 2014

ENVIRONMENTAL RESEARCH CENTER

9 By: [Signature]
10 Chris Heppinstall
11 Executive Director

12 Dated: 1-21, 2014

USPlabs, LLC

13 By: [Signature]
14 Name: honnie Clark
15 Title: manager

16 **APPROVED AS TO FORM:**

17 Dated: _____, 2014

ENVIRONMENTAL RESEARCH CENTER

18 By: _____
19 Michael Freund
20 Attorney for Plaintiff

21 Dated: _____, 2014

USPlabs, LLC

22 By: _____
23 Arthur Fine
24 Attorney for Defendant

25 **JUDGMENT**

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

28 Dated: _____, 2014

Judge of the Superior Court

Exhibit A



Environmental Research Center

5694 Mission Center Road #199
San Diego, CA 92108
619.309.4194

September 4, 2010

VIA CERTIFIED MAIL

Current CEO or President
USP Labs, LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

VIA PRIORITY MAIL

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

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

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

Dear Addressees:

I represent the Environmental Research Center ("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 names of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

USP Labs, LLC

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

USP Labs PowerFULL - Lead

USP Labs Recreate Clinical Strength Fat Loss - Trial Pack -Lead
USP Labs PRIME The Ultimate Muscle Pill - 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 as chemical known to cause cancer.

This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators 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 each of the Violators.

Each of the Violators 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. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemicals.

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 each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. 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.

Please direct all questions concerning this notice to ERC's attorney, Karen A. Evans, 4218 Biona Pl., San Diego, CA 92116, telephone no.: 619-640-8100, e-mail: kaevans1@cox.net.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

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

September 4, 2010

Page 3

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to USP Labs only)

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

CERTIFICATE OF MERIT

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

I, Karen Evans, 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: September 4, 2010

Karen A. Evans

Karen A. Evans
Attorney for Environmental Research Center

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

On September 4, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President
USP Labs, LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

On September 4, 2010, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On September 4, 2010, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 4, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
939 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, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center, 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
2222 M 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
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

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

September 4, 2010

Page 7

- 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, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501
- District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581
- 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, Room 1300
San Diego, CA 92101
- District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103
- District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201
- District Attorney, San Luis Obispo County
1050 Monterey Street, 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
1105 Santa Barbara Street
Santa Barbara, CA 93101
- District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110
- District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060
- District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632
- 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, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403
- District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353
- 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, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291
- District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370
- District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009
- District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695
- District Attorney, Yuba County
215 Fifth Street
Marysville, CA 95901
- Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm 800
Los Angeles, CA 90012
- San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101
- San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102
- San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113



Environmental Research Center

5694 Mission Center Road #199
San Diego, CA 92108
619.309.4194

October 8, 2010

VIA CERTIFIED MAIL

Current President or CEO
USP Labs LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

VIA PRIORITY MAIL

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

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

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

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("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 is:

USP Labs LLC

The product that is the subject of this Notice and the chemical in that product identified as exceeding allowable levels is:

USP Labs - Super Cissus RX - 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 as chemical known to cause cancer.

This letter is a Notice to USP Labs LLC and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving USP Labs LLC 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, has been provided to the Noticed Company with a copy of this letter.

USP Labs LLC 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. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. USP Labs LLC violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 USP Labs LLC agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

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

October 8, 2010

Page 3

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to USP Labs LLC only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by USP Labs LLC

I, Michael Freund, 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: October 8, 2010



Michael Freund
Attorney for Environmental Research Center

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

On October 8, 2010, I served the following documents:

NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO
USP Labs LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

On October 8, 2010, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On October 8, 2010, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on October 8, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
939 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, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center, 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
2222 M 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
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
October 8, 2010
Page 7

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, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

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, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1050 Monterey Street, 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
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

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

District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

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, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

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, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

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

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

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



Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

November 23, 2010

VIA CERTIFIED MAIL

Current President or CEO
USP Labs LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

VIA PRIORITY MAIL

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

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

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

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("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 is:

USP Labs LLC

The product that is the subject of this Notice and the chemical in that product identified as exceeding allowable levels is:

USP Labs PRIME The Ultimate Muscle Pill – Arsenic

On May 1, 1997, the State of California officially listed arsenic (inorganic oxides) as a chemical known to cause reproductive toxicity.

November 23, 2010

Page 2

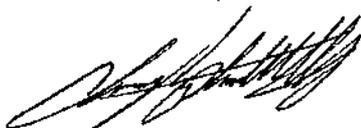
This letter is a Notice to USP Labs LLC and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving USP Labs LLC currently known to ERC from the information now available. ERC may continue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

USP Labs LLC 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. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. USP Labs LLC violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 USP Labs LLC agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to USP Labs LLC only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by USP Labs LLC

I, Michael Freund, 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: November 23, 2010



Michael Freund
Attorney for Environmental Research Center

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

On November 23, 2010, I served the following documents:

NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO
USP Labs LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

On November 23, 2010, I served the following documents: **NOTICE OF VIOLATION, 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)**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On November 23, 2010, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on November 23, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
939 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, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center, 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
2222 M 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
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
November 23, 2010

Page 6

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, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

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, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1050 Monterey Street, 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
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

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

District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

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, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

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, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

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

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

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



Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

January 14, 2011

VIA CERTIFIED MAIL

Current President or CEO
USP Labs LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

VIA PRIORITY MAIL

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

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

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

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("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 is:

USP Labs LLC

The product that is the subject of this Notice and the chemical in that product identified as exceeding allowable levels is:

USP Labs LLC Pink Magic 180 Capsules - 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 as chemical known to cause cancer.

This letter is a Notice to USP Labs LLC and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving USP Labs LLC 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, has been provided to the Noticed Company with a copy of this letter.

USP Labs LLC 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. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. USP Labs LLC violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 USP Labs LLC agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

cc: Karen Evans

Attachments

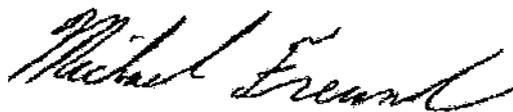
- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to USP Labs LLC only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by USP Labs LLC

I, Michael Freund, 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.



Michael Freund
Attorney for Environmental Research Center

Dated: January 14, 2011

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

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

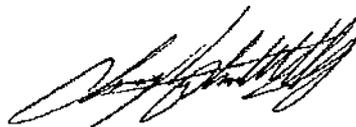
Current President or CEO
USP Labs LLC
2221 Manana Dr Ste 120
Dallas, TX - 75220

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On January 14, 2011, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 14, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
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District Attorney, Calaveras County
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District Attorney, Mariposa County
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Mariposa, CA 95338

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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
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Bridgeport, CA 93517

District Attorney, Monterey County
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

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

January 14, 2011

Page 6

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, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

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, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1050 Monterey Street, 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
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

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

District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

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
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District Attorney, Sonoma County
600 Administration Drive, Room 212J
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District Attorney, Stanislaus County
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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, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
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Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

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

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

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

Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

January 10, 2014

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

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

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

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

USPLabs, LLC dba USPlabs, LLC

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

USPlabs LLC OxyElite Protein Powder Milk Chocolate – Lead

USPlabs LLC OxyElite Protein Powder Vanilla Ice Cream – Lead

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals 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 January 10, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

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

Sincerely,



Michael Freund

Attachments

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

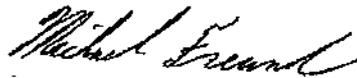
CERTIFICATE OF MERIT

**Re: Environmental Research Center's Notice of Proposition 65 Violations by USPLabs, LLC
dba USPLabs, 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 chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 10, 2014



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 January 10, 2014, 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
USPLabs, LLC dba USPlabs, LLC
10761 King William Drive
Dallas, TX 75220

CT Corporation System
(USPLabs, LLC dba USPlabs, LLC's Registered
Agent for Service of Process)
350 North Saint Paul Street
Suite 2900
Dallas, TX 75201

On January 10, 2014, I electronically served the following documents: **NOTICE OF VIOLATION, 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)** on the following party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On January 10, 2014, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 10, 2014 in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

January 10, 2014

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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, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
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Crescent City, CA 95531

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515 Main Street
Placerville, CA 95667

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District Attorney, Glenn County
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Willows, CA 95988

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Eureka, CA 95501

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District Attorney, Lake County
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Lakeport, CA 95453

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