

1 Philip T. Emmons (SBN 124902)  
2 Law Office of Philip T. Emmons  
3 1990 North California Blvd., 8<sup>th</sup> Floor  
4 Walnut Creek, CA 94596-3742  
5 T: (925) 287-6436  
6 F: (925) 287-6437

7 Attorney for Plaintiff  
8 Environmental Research Center

9 Michele B. Corash (SBN 103653)  
10 William F. Tarantino (SBN 215343)  
11 Morrison & Foerster LLP  
12 425 Market Street  
13 San Francisco, CA 94105  
14 T: (415) 268-7000  
15 F: (415) 2687522

16 Attorneys for Defendant  
17 The Isopure Company, LLC  
18 (dba Nature's Best, Inc.)

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF SAN FRANCISCO

21 ENVIRONMENTAL RESEARCH  
22 CENTER, a California non-profit  
23 corporation,

24 Plaintiff,

25 v.

26 NATURE'S BEST, INC., THE ISOPURE  
27 COMPANY, LLC, and DOES 1-50,  
28 inclusive,

Defendants.

Case No. CGC-11-513929

**[PROPOSED] CONSENT JUDGMENT**

**1. INTRODUCTION**

1.1 On September 6, 2011, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties ("Complaint") pursuant to the provisions of

1 California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
2 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65"),  
3 against Defendant The Isopure Company, LLC dba Nature's Best, Inc. ("Isopure"). ERC and  
4 Isopure are hereinafter sometimes referred to individually as a "Party" or collectively as the  
5 "Parties".

6 1.2 ERC is a California non-profit corporation dedicated to, among other causes,  
7 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
8 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
9 encouraging corporate responsibility.

10 1.3 Isopure is a Delaware corporation, qualified to do business in the State of  
11 California. At all times relevant to this action, Isopure has employed ten or more persons and is a  
12 "person in the course of doing business" within the meaning of Proposition 65.

13 1.4 On September 4, 2010, pursuant to California Health and Safety Code  
14 § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations")  
15 on the California Attorney General, other public enforcers, and Isopure. A true and correct copy  
16 of the Notice of Violations is attached hereto as Exhibit A. The Notice of Violations contains  
17 allegations that Isopure, without giving a required clear and reasonable warning, has exposed and  
18 continues to expose individuals in California to lead, a chemical listed under Proposition 65 as a  
19 carcinogen and reproductive toxin, by manufacturing, marketing, distributing and/or selling the  
20 following 5 products:

- 21 1) Nature's Best Isopure Apple Melon,
- 22 2) Nature's Best Isopure Pineapple Orange Banana,
- 23 3) Nature's Best Isopure Mango Peach,
- 24 4) Nature's Best Isopure Grape Frost, and
- 25 5) Nature's Best Isopure Blue Raspberry.

26 These five products (including all package sizes of the five products) are hereinafter referred to  
27 collectively as the "Covered Products". Neither the California Attorney General nor any other

28 ///

1 public enforcer has filed suit against Isopure with regard to the Covered Products or the alleged  
2 violations.

3 1.5 More than 60 days after service of the Notice of Violations, ERC filed the  
4 Complaint, which is based on the Notice of Violations and contains allegations that Isopure has  
5 exposed and continues to expose persons in California who use and/or handle the Covered  
6 Products to the chemical lead in excess of the exposure levels allowed under Proposition 65  
7 without first providing clear and reasonable warnings, in violation of California Health and  
8 Safety Code § 25249.6. Isopure denies all material allegations contained in the Notice of  
9 Violations and the Complaint, asserts numerous affirmative defenses to the allegations of  
10 violations, and specifically denies that the Covered Products require Proposition 65 warnings or  
11 otherwise harm any person.

12 1.6 The Parties enter into this Consent Judgment in order to settle disputed claims  
13 between them and to avoid prolonged and costly litigation.

14 1.7 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,  
15 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or  
16 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be  
17 construed as giving rise to any presumption or inference of admission or concession or waiver of  
18 a defense by Isopure as to any fault, wrongdoing or liability whatsoever, including, but not  
19 limited to, any alleged violation of Proposition 65.

20 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall  
21 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or  
22 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,  
23 responsibilities, and duties of any Party to this Consent Judgment.

24 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent  
25 Judgment is entered by the Court.

26 1.10 The only products covered by this Consent Judgment are the Covered Products,  
27 and the only chemical covered by this Consent Judgment is the chemical lead as related to the  
28 Covered Products only.

1     **2.     JURISDICTION AND VENUE**

2             For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that  
4 venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment  
5 pursuant to the terms set forth herein.

6     **3.     INJUNCTIVE RELIEF**

7             **3.1     Reformulation of Covered Product**

8             On and after the Effective Date, Isopure shall be permanently enjoined from  
9 manufacturing for sale in California, distributing into California, or directly selling to any  
10 consumer located in California any of the Covered Products that have a daily lead exposure rate  
11 of more than 0.5 micrograms of lead, calculated using the following formula: micrograms of lead  
12 per gram of product, multiplied by grams of product per serving of the product (using the largest  
13 serving size appearing on the product label), multiplied by servings of product per day (using the  
14 largest recommended number of servings per day appearing on the product label), which equals  
15 micrograms of lead exposure per day. The term “distributing into California,” as used herein,  
16 means to ship any of the Covered Products into California for sale in California or to sell or  
17 provide any of the Covered Products to any person or entity Isopure know intends to or will ship  
18 any of the Covered Products into or sell any of the Covered Products in California.

19             **3.2     Testing**

20             (a)     Within 30 days of the Effective Date, Isopure shall have tested for lead content  
21 three (3) samples of the final product that comprises each of the Covered Products, with samples  
22 randomly selected from three (3) different lots (or from the maximum number of lots that are  
23 available for testing if there are fewer than three (3) lots available). The testing required under  
24 this Section 3.2 will be repeated annually for two years following the compilation of the initial  
25 data set. The term “lot,” as used herein, means one manufacturing cycle. Each lot shall be  
26 designated by a numbers, letters, or a combination of numbers and letters unique to that lot, and  
27 which shall be affixed or printed on each bottle or container of any of the Covered Products in  
28 that lot. Each sample to be tested shall be randomly selected using generally accepted practices

1 for random sampling, and shall be identified in Isopure's request to the laboratory for testing as  
2 being submitted pursuant to this Consent Judgment.

3 (b) Testing for lead content under Section 3.2 shall be performed using closed-vessel,  
4 microwave-assisted acid digestion employing high-purity reagents, followed by Inductively  
5 Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of less than or  
6 equal to 0.010 mg/kg; or heat-assisted acid digestion employing high-purity reagents, followed  
7 by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of  
8 quantification of less than or equal to 0.010 mg/kg; or any other testing method agreed upon in  
9 writing by the Parties.

10 (c) Testing for lead content under Section 3.2 shall be performed by a laboratory  
11 certified by the California Environmental Laboratory Accreditation Program and be experienced  
12 in testing for lead levels in foods.

13 (d) Isopure shall retain copies of all laboratory reports with results of testing for lead  
14 content under Section 3.2 for a period of two years following the delivery of the test results to  
15 Isopure. Isopure agrees to provide ERC with the results of these tests within 30 calendar days of  
16 the receipt of ERC's written request delivered by any of the methods set forth in Section 17.  
17 These reports shall be deemed and treated as confidential information.

18 (e) Nothing in this Consent Judgment shall limit Isopure's ability to conduct, or  
19 require that others conduct, additional testing of the Covered Product, including the raw  
20 materials used in their manufacture.

21 (f) The testing and sampling methodology set forth in Section 3.2 is a result of  
22 negotiation and compromise, and is accepted by the Parties for the purposes of settling,  
23 compromising, and resolving the issues in this Action, including future compliance with Section  
24 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except  
25 for the purposes of determining future compliance with this Consent Judgment.

### 26 3.3 Products in the Stream of Commerce

27 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products  
28 that Isopure put into the stream of commerce before the Effective Date. Isopure shall provide

1 ERC with the last lot number and expiration date for each of the Covered Products in the stream  
2 of commerce on the Effective Date.

3 **4. SETTLEMENT PAYMENT**

4 **4.1 Total Payment**

5 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,  
6 ERC's expenses and costs of litigation, and ERC's attorney fees, Isopure shall, within 10 days  
7 after the Effective Date, issue a single check in the amount of \$110,000 ("Total Settlement  
8 Amount"), made payable to "Environmental Research Center – ERC Escrow Account", and send  
9 the check by first-class registered or certified mail, or overnight delivery, directly to ERC at the  
10 following address:

11 Environmental Research Center  
12 3111 Camino del Rio North, Suite 400  
13 San Diego, CA 92108

14 Isopure shall also issue a single IRS Federal Tax Form 1099 for the above payment to ERC.

15 Sections 4.2-4.5 below describe the agreed partition of the Total Settlement Amount.

16 **4.2 Civil Penalty**

17 As a portion of the Total Settlement Amount, \$16,000 shall be considered a civil penalty  
18 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$12,000)  
19 of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for  
20 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California  
21 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to  
22 Isopure's counsel. ERC will retain the remaining 25% (\$4,000) of the civil penalty.

23 **4.3 Payment in Lieu of Further Civil Penalties**

24 As a portion of the Total Settlement Amount, \$45,625 shall be considered a payment to  
25 ERC in lieu of further civil penalties for activities such as (1) funding the investigating,  
26 researching and testing of consumer products that may contain Proposition 65 listed chemicals;  
27 (2) funding grants to California non-profit foundations/entities dedicated to public health;  
28 (3) funding ERC's Got Lead? Program to assist consumers in testing products for lead content;  
(4) funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC's

1 database of lead-free products, Proposition 65-compliant products and contaminated products;  
2 (6) funding to track and catalog Proposition 65-compliant, contamination-free sources of  
3 ingredients used in the products ERC tests; and (7) funding the continued day to day business of  
4 enforcement of Proposition 65 matters which address contaminated ingestible products, similar  
5 to the subject matter of this Action.

#### 6 **4.4 Reimbursement of Expenses and Costs**

7 As a portion of the Total Settlement Amount, \$24,500 shall be considered a  
8 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of  
9 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this  
10 matter to Isopure's attention, litigating and negotiating a settlement in the public interest.

#### 11 **4.5 Attorney Fees**

12 As a portion of the Total Settlement Amount, \$23,875 shall be considered a  
13 reimbursement to ERC for its attorney fees.

### 14 **5. COSTS AND FEES**

15 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'  
16 fees, costs and expenses in this action.

### 17 **6. RELEASE**

18 6.1 ERC, acting on its own behalf and in the public interest, releases Isopure, and its  
19 respective officers, directors, shareholders, employees, agents, representatives, parents,  
20 subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and  
21 attorneys, and suppliers, manufacturers, distributors, wholesalers, retailers and all other entities  
22 in the distribution chain of the Covered Products excluding private label customers ("Released  
23 Parties"), except from all claims for violations of Proposition 65 up through the Effective Date  
24 based on exposure to lead from the Covered Products as set forth in the Notice of Violations and  
25 the Complaint.

26 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with  
27 Proposition 65 with respect to exposures to lead from the Covered Products.

28 6.3 ERC on behalf of itself only, on the one hand, and Isopure, on the other hand,

1 release and waive all claims they may have against each other and their respective officers,  
2 directors, employees, agents, representatives and attorneys for any statements or actions made or  
3 undertaken by them or their respective officers, directors, employees, agents, representatives and  
4 attorneys in connection with the Notice of Violations or this action.

5 6.4 Nothing in this release is intended to apply to any occupational or environmental  
6 exposures arising under Proposition 65.

7 **7. MOTION FOR COURT APPROVAL**

8 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,  
9 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California  
10 Code of Regulations § 3000, *et seq.* This motion shall be served upon Isopure and upon the  
11 California Attorney General's Office. Isopure and ERC shall use their best efforts to support  
12 entry of this Consent Judgment in the form submitted to the Court for approval.

13 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the  
14 California Attorney General objects in writing to any term in this Consent Judgment or files an  
15 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely  
16 manner prior to the hearing on the motion. If the concern of the California Attorney General is  
17 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent  
18 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph  
19 17 below and notice to the California Attorney General's Office, and upon such notice this  
20 Consent Judgment shall be null and void.

21 7.3 This Consent Judgment shall be effective only after it has been entered by the  
22 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for  
23 any purpose.

24 **8. RETENTION OF JURISDICTION**

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

27 **9. MODIFICATION OF CONSENT JUDGMENT**

28 This Consent Judgment after its entry by the Court may be modified only upon written

1 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

2 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**  
3 **RESOLVE DISPUTES**

4 In the event a dispute arises with respect to any Party's compliance with the terms and/or  
5 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of  
6 another Party shall make a good faith attempt to resolve the dispute by conferring with the other  
7 Party in person, by telephone or by written communication before seeking relief from the Court.  
8 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in  
9 this Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law.  
10 The prevailing party in any such dispute brought to this Court for resolution shall be awarded all  
11 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing  
12 party" means a party who is successful in obtaining relief more favorable to it than the relief the  
13 other party was agreeable to providing during the Parties' good faith attempt to resolve the  
14 dispute that is the subject of such an enforcement proceeding.

15 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

16 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions  
17 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable  
18 provisions shall not be adversely affected.

19 **12. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of  
21 California and apply within the State of California.

22 **13. RELATION TO OTHER ACTIONS**

23 This Consent Judgment shall have no application or effect on Isopure for the Covered  
24 Products or other products distributed or sold by Isopure to consumers outside the State of  
25 California.

26 **14. DRAFTING**

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

1 terms and conditions with its legal counsel. The Parties agree that, in any subsequent  
2 interpretation or construction of this Consent Judgment, no inference, assumption or presumption  
3 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,  
4 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or  
5 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the  
6 Parties participated equally in the preparation and drafting of this Consent Judgment.

7 **15. ENTIRE AGREEMENT**

8 This Consent Judgment contains the sole and entire agreement and understanding of the  
9 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all  
10 prior agreements or understandings, written or oral, with regard to the matters set forth herein.  
11 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall  
12 be deemed to exist or to bind any of the Parties.

13 **16. EXECUTION IN COUNTERPARTS**

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

17 **17. NOTICES**

18 All notices required by this Consent Judgment to be given to any Party shall be sent by  
19 first-class registered or certified mail, or overnight delivery, to the following:

20  
21 **FOR ERC:**

22 Chris Heptinstall, Executive Director  
23 Environmental Research Center  
24 3111 Camino del Rio North, Suite 400  
25 San Diego, CA 92108

26 Philip T. Emmons  
27 Law Office of Philip T. Emmons  
28 1990 North California Blvd., 8<sup>th</sup> Floor  
Walnut Creek, CA 94596-3742

1 Karen A. Evans  
2 Law Office of Karen A. Evans  
3 4218 Biona Place  
4 San Diego, CA 92116

4 **FOR DEFENDANT:**

5 Hal Katz  
6 Chief Executive Officer  
7 The Isopure Company, LLC  
8 195 Engineers Road  
9 Hauppauge, NY 11788

9 William F. Tarantino  
10 Morrison & Foerster LLP  
11 425 Market Street  
12 San Francisco, CA 94105

12 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

13 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is  
14 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment  
15 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,  
16 and to legally bind that Party to this Consent Judgment. Each person signing this Consent  
17 Judgment on behalf of a Party represents and warrants that he or she has read and understands  
18 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on  
19 behalf of that Party.

20 **IT IS SO STIPULATED:**

21 Dated: 3/22/2013

ENVIRONMENTAL RESEARCH CENTER

22 By:   
23 Chris Heston  
24 Executive Director

25 Dated: \_\_\_\_\_

THE ISOPURE COMPANY, LLC

26 By: \_\_\_\_\_  
27 Hal Katz  
28 Chief Executive Officer

1 Karen A. Evans  
2 Law Office of Karen A. Evans  
3 4218 Biona Place  
4 San Diego, CA 92116

4 **FOR DEFENDANT:**

5 Hal Katz  
6 Chief Executive Officer  
7 The Isopure Company, LLC  
8 195 Engineers Road  
9 Hauppauge, NY 11788

9 William F. Tarantino  
10 Morrison & Foerster LLP  
11 425 Market Street  
12 San Francisco, CA 94105

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17 Judgment on behalf of a Party represents and warrants that he or she has read and understands  
18 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on  
19 behalf of that Party.

20 **IT IS SO STIPULATED:**

21 Dated: \_\_\_\_\_

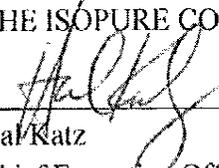
ENVIRONMENTAL RESEARCH CENTER

22 By: \_\_\_\_\_

23 Chris Heptinstall  
24 Executive Director

25 Dated: 3/22/13

THE ISOPURE COMPANY, LLC

26 By:  \_\_\_\_\_

27 Hal Katz  
28 Chief Executive Officer

1 APPROVED AS TO FORM:

2  
3 Dated: 3/22/13

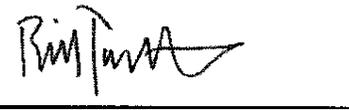
LAW OFFICE OF PHILIP T. EMMONS

4  
5 By: 

6 Philip T. Emmons  
7 Attorney for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER

9 Dated: March 27, 2013

MORRISON & FOERSTER LLP

10 By: 

11 William F. Tarantino  
12 Attorney for Defendant  
13 THE ISOPURE COMPANY, LLC  
14 (dba NATURE'S BEST, INC.)

15 **ORDER AND JUDGMENT**

16 Based on the Parties' stipulation, and good cause appearing therefor, this Consent  
17 Judgment is approved and judgment is hereby entered according to its terms.  
18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19  
20 Dated: \_\_\_\_\_

\_\_\_\_\_  
21 Judge of the Superior Court

22  
23  
24  
25 EXHIBIT A – [Notice of Violations]  
26  
27  
28

**EXHIBIT A**

LAW OFFICES OF  
**ANDREW L. PACKARD**  
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

September 4, 2010

**VIA CERTIFIED MAIL**

Current President or CEO  
Nature's Best, Inc.  
195 Engineers Rd  
Hauppauge, NY 11788

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

Dear Sirs,

This firm represents the Environmental Research Center (hereafter, "ERC"), a non-profit corporation organized under California's Non-Profit Public Benefit Corporation Law in connection with this notice of violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as "Proposition 65").

ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety and corporate responsibility. ERC has documented the violations of Proposition 65 described herein, and this letter serves to provide notification of these violations to you and to the public enforcement agencies. Pursuant to §25249.7(d) of the statute, ERC intends to bring an enforcement action sixty (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. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator(s).

The names of the violator(s) covered by this notice are: Nature's Best, Inc. (hereafter, the "Violator(s)"). The Violator(s) manufacture, market, distribute and/or sell in California the following products causing exposures to lead and lead compounds:

Nature's Best Isopure Apple Melon  
Nature's Best Isopure Pineapple Orange Banana  
Nature's Best Isopure Mango Peach  
Nature's Best Isopure Grape Frost  
Nature's Best Isopure Blue Raspberry

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

**EXHIBIT A**

**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 by consumers. Accordingly, consumer exposures have occurred and continue to occur primarily through the ingestion route, but also may occur through the inhalation and/or and dermal contact routes of exposure.

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least September 4, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against the Violator(s) unless the Violator(s) agree in an enforceable written instrument to: (1) recall products already sold; (2) take effective measures to prevent unwarned lead exposures from being caused by products sold in the future; and (3) pay an appropriate civil penalty. In keeping with the public interest goals of the statute and my client's objectives in issuing this notice, ERC is interested in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation. ERC's Executive Director is Chris Heptinstall and the organization's mailing address is: 5694 Mission Center Road, #199, San Diego, CA 92108. Tel. (619) 309-4194. However, ERC has retained this firm in connection with this matter; therefore, all communications regarding this Notice of Violation may be directed to my attention at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

Attachments:

OEHHA Summary

Certificate of Merit (w/o AG attachments)

Certificate of Service

List of Service

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

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

### **WHAT DOES PROPOSITION 65 REQUIRE?**

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

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

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens. Exposures that will produce

no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

CERTIFICATE OF MERIT

**Re: the Environmental Research Center's Notice of Proposition 65 Violations Issued to Nature's Best, Inc.**

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §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 has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultations, and on all 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and 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



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Andrew L. Packard

**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 VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: 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  
Nature's Best, Inc.  
195 Engineers Rd  
Hauppauge, NY 11788

On September 4, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT (including supporting documentation required by Title 11 CCR §3102)** 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

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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, 2<sup>nd</sup> 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 Cir., 3<sup>rd</sup> 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 12<sup>th</sup> 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 2<sup>nd</sup> 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