

1 **LAW OFFICE OF MICHAEL FREUND**

2 Michael Freund (State Bar No. 99687)

3 1919 Addison Street, Suite 105

4 Berkeley, CA 94704

5 Telephone: (510) 540-1992

6 Facsimile: (510) 540-5543

7 Email: freund1@aol.com

8 Attorneys for Plaintiff

9 ENVIRONMENTAL RESEARCH CENTER

10 **SEDGWICK LLP**

11 Carol Brophy (State Bar No. 155767)

12 333 Bush Street, 30<sup>th</sup> Floor

13 San Francisco, CA 94104-2834

14 Telephone: (415) 781-7900

15 Facsimile: (415) 781-2635

16 Email carol.brophy@sedgwicklaw.com

17 Attorneys for Defendants

18 ALLERGY RESEARCH GROUP, INC.

19 and NUTRICOLOGY, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SAN FRANCISCO

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

24 Plaintiff,

25 v.

26 ALLERGY RESEARCH GROUP, INC.,  
27 NUTRICOLOGY, INC. and DOES 1-100,

28 Defendants.

CASE NO. CGC-11-512615

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: July 19, 2011

TRIAL DATE: Not Set

1 **1. INTRODUCTION**

2 **1.1** On July 19, 2011, Plaintiff Environmental Research Center ("ERC"), a non-profit  
3 corporation, as a private enforcer, and in the public interest, initiated this action by filing a  
4 Complaint for Injunctive and Declaratory relief and Civil Penalties pursuant to the provisions of  
5 Cal. Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"), against Allergy Research  
6 Group, Inc. and Nutricology, Inc. and DOES 1-100 ("Defendants"). ERC and Defendants shall  
7 sometimes be referred to individually as a "Party" or collectively as the "Parties."

1           1.2     The Complaint is based on allegations contained in ERC's Notices of Violation  
2     dated January 14, 2011, March 11, 2011 and May 9, 2012 ("the Notices") that were served on  
3     the California Attorney General, other public enforcers and Defendants. True and correct copies  
4     of these Notices are attached hereto as Exhibit A. More than 60-days have passed since the  
5     Notices were mailed and no designated entity has filed a complaint against Defendants with  
6     regard to the Covered Products or the alleged violations.

7           1.3     In this action, ERC alleges that the products manufactured, distributed or sold by  
8     Defendants contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive  
9     toxin, and that such products expose consumers at a level requiring a Proposition 65 warning.  
10    The following products were noticed in these Notices: Nutricology Inc. ProGreens with  
11    Advanced Probiotic Formula 15 StickPacks 132 g; Nutricology Inc. ProGreens with Advanced  
12    Probiotic Formula 30 Day Supply 265 g; Allergy Research Group Calm/Recharge 250 Grams;  
13    Allergy Research Group PhytoCort 120 Vegetarian Capsules; Allergy Research Group AllerAid  
14    Herbal 90 Tablets; Allergy Research Group Steady On 300 Grams; Allergy Research Group Liver  
15    Saver 120 Tablets; Allergy Research Group GastroCleanse with Psyllium Husks 100 Vegetarian  
16    Capsules; Nutricology Inc. Licorice Solid Extract (114 g); Nutricology Inc. FibroBoost 75  
17    Vegetarian Capsules; Nutricology Inc. Sugar Balance Formula 90 Vegetarian Capsules; Nutricology  
18    Inc. Chitosan 90 Vegetarian Capsules; Nutricology Inc. Slumberol 100 Vegetarian Capsules;  
19    Nutricology Inc. SlimGreens Powder 180 grams; Allergy Research Group Earth Dragon 150  
20    Capsules; and Allergy Research Group Cell Saver 150 Capsules ("Covered Products").

21           1.4     ERC is a California non-profit corporation dedicated to, among other causes,  
22    helping safeguard the public from health hazards by bringing about a reduction in the use and  
23    misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and  
24    employees and encouraging corporate responsibility.

25           1.5     Defendants are business entities that at all times relevant for purposes of this  
26    Consent Judgment employ ten or more persons.

27           1.6     ERC's Notices and the Complaint allege that use of the Covered Products exposes  
28    persons in California to lead without first providing clear and reasonable warnings in violation of

1 Cal. Health & Safety Code Section 25249.6. Defendants deny violation of Proposition 65 and  
2 expressly assert that all detectible levels of lead in the Covered Products are the result of  
3 naturally occurring lead levels, as provided for in California Code of Regulations, Title 27,  
4 Section 25501 (a). Nothing in the Consent Judgment shall be construed as an admission by  
5 Defendants of any fact, issue of law or violation of law, nor shall compliance with the Consent  
6 Judgment constitute or be construed as an admission by Defendants of any fact, issue of law or  
7 violation of law, at any time, for any purpose. Nothing in the Consent Judgment shall prejudice,  
8 waive or impair any right, remedy or defense that Defendants may have in any other or further  
9 legal proceedings.

10 1.7 The Parties have entered into this Consent Judgment in order to settle,  
11 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing  
12 in this Consent Judgment shall constitute or be construed as an admission by any of the Parties,  
13 or by any of their respective officers, directors, shareholders, employees, agents, parent  
14 companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,  
15 distributors, wholesalers, , or retailers, or any fact, conclusion of law, issue of law, violation of  
16 law, fault, wrongdoing, or liability, including without limitation, any admission concerning any  
17 alleged violation of Proposition 65; provided, however, nothing in this Section shall affect the  
18 enforceability of this Consent Judgment.

19 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
20 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
21 other or future legal proceeding unrelated to these proceedings.

22 1.9 The Effective Date of this Consent Judgment shall be the date on which it is  
23 entered as a Judgment by this Court.

24 1.10 Immediately after receiving ERC's first Notice of Violation, Defendants stopped  
25 all Covered Product shipments into California. On or about January 28, 2011, Defendants  
26 notified its distributors and retailers concerning Proposition 65, and advised them that any  
27 Covered Product inventory in stock should not be shipped to California consumers unless  
28 Proposition 65 warnings were placed on the label. Proposition 65 warning stickers were

1 provided with the notification letters for the distributors' convenience. Beginning February  
2 2011, Defendants created two labeled versions of Covered Products. Beginning February 2011,  
3 Covered Products shipped for sale in California contain Proposition 65 warnings on the labels  
4 (California Products), as set forth in paragraph 3.2 below. Covered Products for sale and  
5 distribution in the other 49 states and internationally are labeled "Not for Sale in California." On  
6 or about July 11, 2011, Defendants arranged for its distributors and retailers to attend a  
7 comprehensive Proposition 65 compliance training session for foods and dietary supplements  
8 conducted by legal counsel.

9 **2. JURISDICTION AND VENUE**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
11 jurisdiction over the allegations of violations contained in the Complaint and personal  
12 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in San  
13 Francisco County, and that this Court has jurisdiction to enter this Consent Judgment as a full  
14 and final resolution of all claims which were or could have been asserted in this action based on the  
15 facts alleged in the Notices of Violation and the Complaint.

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

17 **3.1** On or after the Effective Date, Defendants shall be enjoined from manufacturing  
18 for sale in California, "distributing into California" (as that phrase is defined below in Section  
19 3.4) or directly selling to a consumer in California any Covered Product without a Proposition 65  
20 warning as set forth in Paragraph 3.5, unless Defendants can demonstrate that the Covered  
21 Product does not expose any person to a daily dose of more than 0.5 micrograms of lead when  
22 the maximum daily dose is taken as directed on the product label, as verified by the exposure  
23 formula set forth in Section 3.6 and using the testing methodology set forth in Section 3.6.

24 **3.2** Prior to selling any Covered Product in California (e.g. "California Covered  
25 Products") without a Proposition 65 warning in the future, Defendants shall undertake testing of  
26 the Covered Products, as defined by the quality control methodology set forth in Paragraph 3.6.  
27 The testing shall continue for so long as any of the California Covered Products are sold directly  
28 to California consumers or sold to a third party for retail sale in California (hereinafter

1 “distributing into California”).

2 **3.3 Best Efforts to Reduce Lead Levels in Covered Products**

3 While continuing to provide Proposition 65 warnings for the California Covered  
4 Products, Defendants shall engage in best efforts to reduce lead levels in the Covered Products,  
5 including requiring all suppliers and vendors to comply with Proposition 65, federal Food Drug  
6 and Cosmetic Act requirements and best manufacturing practices. Nothing in this Consent  
7 Judgment shall be construed to require reformulation of Covered Products in a manner that  
8 would reduce their medicinal value or efficacy.

9 **3.4** As used in this Consent Judgment, the term “distributing into California” shall  
10 mean to directly ship a Covered Product into California for sale in California or to sell a Covered  
11 Product to a distributor that Defendants knows will sell the Covered Product in California.  
12 “Distributed into the stream of commerce” shall mean Defendants sold the Covered Product to a  
13 customer and no longer determines further distribution, sale or use. Where Defendants have 1)  
14 informed a distributor who may distribute or sell into California that it must only ship California  
15 Products to California consumers, and 2) has shipped Non-California Products to said distributor,  
16 Defendants shall be deemed to have distributed in the stream of commerce, and have violated  
17 this Consent Judgment.

18 **3.5 Clear and Reasonable Warnings**

19 Defendants shall provide the following Proposition 65 warning as specified below:

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

23 The term “cancer” shall be used in the warning only if the maximum daily dose  
24 recommended on the label contains more than 15 micrograms of lead as determined by the  
25 quality control methodology set forth in Section 3.6. The words “California Proposition 65”  
26 shall be at Defendants’ option.

27 **3.5.1** The warning shall be securely affixed to or printed upon the container or  
28 the label of the Covered Product. The warning shall be displayed with such conspicuousness, as  
compared with other words, statements, or design of the label or container, as applicable, to

1 render the warning likely to be read and understood by an ordinary individual under customary  
2 conditions of purchase or use of the product. The warning appearing on the label or container  
3 shall be at least the same size as the largest of any other health or safety warnings  
4 correspondingly appearing on the label or container, as applicable, of such product, and the  
5 words "warning" shall be in all capital letters and in bold print and, if used, the words  
6 "California Proposition 65" shall be in bold print. The labels currently being used shall be  
7 deemed to comply with this provision.

### 8 **3.6 Testing and Quality Control Methodology**

9 **3.6.1** For purposes of this Consent Judgment, daily lead exposure levels shall be  
10 measured in micrograms, and shall be calculated using the following formula: micrograms of  
11 lead per gram of product, multiplied by grams of product per serving of the product (using the  
12 largest serving size appearing on the product label), multiplied by servings of the product per day  
13 (using the largest number of servings in a recommended dosage appearing on the product label),  
14 which equals micrograms of lead exposure per day.

15 **3.6.2** Prior to selling any Covered Product in California without a Proposition  
16 65 warning, Defendants shall test the Covered Products for lead content to ensure lead levels are  
17 below 0.5 micrograms per day. Testing for lead shall be performed using closed-vessel,  
18 microwave-assisted digestion employing high-purity reagents followed by Inductively Coupled  
19 Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to  
20 0.010 mg/kg or any other testing method subsequently agreed upon in writing by the Parties.  
21 All testing pursuant to this Consent Judgment shall be performed by a laboratory certified by the  
22 California Environmental Laboratory Accreditation Program for the analysis of heavy metals or  
23 a laboratory that is approved by, accredited by, or registered with the United States Food & Drug  
24 Administration for the analysis of heavy metals. Defendants may test the Covered Products if  
25 they are a qualified laboratory as described above. The laboratory shall follow this testing  
26 methodology and the Agreed Formula. The method of selecting samples for testing must comply  
27 with the regulations of the Food and Drug Administration as set forth in Title 21, Part 111,  
28 Subpart E of the Code of Federal Regulations, including section 111.80 (c). Nothing in this

1 Consent Judgment shall limit Defendants ability to conduct, or require that others conduct,  
2 additional testing of the Covered Products, including the raw materials used in their manufacture.

3 3.6.3 Prior to selling any Covered Product in California without a Proposition  
4 65 warning, Defendants shall arrange for the lead testing of five (5) randomly selected samples  
5 of each Covered Product (in the form intended for sale to the end-user) to be distributed or sold  
6 to California. Before Defendants' first distribution or sale of a Covered Product, and continuing  
7 for at least four (4) years thereafter, at least once every year, Defendants shall test the Covered  
8 Products. The testing shall continue so long as the Covered Products are sold in California or  
9 sold to a third party for retail sale in California. The testing requirements do not apply to a  
10 Covered Product for which Defendants have provided the warning specified in Section 3.5.

11 3.6.4 Defendants shall provide ERC with a minimum of thirty (30) days notice  
12 prior to selling any Covered Product without a Proposition 65 warning. Prior to selling any  
13 Covered Product in California without a Proposition 65 warning, upon written request by ERC,  
14 Defendants shall provide to ERC any test results and documentation of testing undertaken by  
15 Defendants within ten working days of receipt by Defendants of ERC's request. Defendants  
16 shall retain all test results and documentation for a period of four years from the date of each test.  
17 However, if after the four-year period, Defendants change ingredient suppliers for any of the  
18 Covered Products and/or reformulates any of the Covered Products, Defendants shall test that  
19 Covered Product at least once after such change or reformulation is made. ERC may not request  
20 copies of product tests, and Defendants shall have no obligation to provide such tests, unless  
21 Covered Products are sold in California without a Proposition 65 warning.

22 3.6.5 No Proposition 65 warning is required if the test results from all five (5)  
23 samples indicate the Covered Product contains no more than 0.5 micrograms of lead per day. If  
24 any of the test results contain more than 0.5 micrograms of lead per day, Defendants shall either  
25 continue to provide Proposition 65 warnings for such Covered Product pursuant to Section 3.5 or  
26 reformulate the Covered Product to levels below 0.5 micrograms per day.

27 ///

28

1                   3.6.6 If testing conducted pursuant to this Consent Judgment demonstrates that  
2 no Proposition 65 warning is required for a Covered Product during each of four consecutive  
3 years, then the testing requirements are no longer required as to that Covered Product.

4                   3.6.7 Defendant shall have no obligation to comply with Paragraphs 3.6.1 –  
5 3.6.6 unless Defendants elect to sell Covered Products in California without a Proposition 65  
6 warning.

7       **4. SETTLEMENT PAYMENT**

8                   4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
9 penalties, attorney's fees and costs, Defendants shall make a total payment of \$152,500 within  
10 ten (10) business days of receiving the Notice of Entry of Judgment. Said payment shall be for  
11 the following:

12                   4.2 \$21,000 shall be payable as civil penalties pursuant to Health & Safety Code  
13 Section 25249.7 (b) (1). Of this amount, \$15,750 shall be payable to the Office of  
14 Environmental Health Hazard Assessment ("OEHHA") and \$ 5,250 shall be payable to  
15 Environmental Research Center. Cal. Health & Safety Code Section 25249.12 (c) (1) & (d).  
16 Defendants shall send both civil penalty payments to ERC's counsel who shall be responsible to  
17 forward the civil penalty payment to OEHHA along with a copy of the transmittal to counsel for  
18 Defendants.

19                   4.3 \$24,835 payable to Environmental Research Center as reimbursement to ERC for  
20 (A) reasonable costs associated with the enforcement of Proposition 65 and other costs incurred  
21 as a result of bringing this action and (B) \$55,124 payable to Environmental Research Center in  
22 lieu of further civil penalties, for activities such; (1) analysis, researching, and testing consumer  
23 products that may contain Proposition 65 chemicals; (2) the continued monitoring of past  
24 consent judgments and settlements to ensure companies are in compliance with Proposition 65;

25                   4.4 \$44,091 payable to Michael Freund as reimbursement of ERC's attorney's fees

26                   4.5 \$7,450 payable to The Painted Turtle. Defendants shall provide ERC a copy of  
27 its receipt for in lieu payment to The Painted Turtle.

28       ///

1           4.6 Defendants' payments pursuant to paragraphs 4.2 - 4.4 shall be mailed to the Law  
2 Office of Michael Freund. Defendants shall be provided with taxpayer identification information  
3 to enable Defendants to process the payments.

4           **5. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

5           5.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
6 this Consent Judgment for a period of five years from the date of entry of judgment. However,  
7 Defendants' obligation to comply with Proposition 65 shall continue as long as Proposition 65 is  
8 in force as to Covered Products.

9           5.2 Only after it complies with Section 14 below, any Party may, by motion or  
10 application for an order to show cause filed with this Court, enforce the terms and conditions  
11 contained in this Consent Judgment.

12           **6. APPLICATION OF CONSENT JUDGMENT**

13           This Consent Judgment may apply to, be binding upon and benefit the Parties, and their  
14 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
15 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers (not  
16 including private labels), and all predecessors, successors and assigns of any of them and ERC  
17 on its own behalf and in the public interest as set forth in Section 8. This Consent Judgment  
18 shall have no application to Covered Products which are manufactured, distributed or sold  
19 outside the State of California and which are not used by California consumers. This Consent  
20 Judgment shall terminate without further action by any Party when Defendants no longer  
21 manufacture, distributes or sells all of the Covered Products and all of such Covered Products  
22 previously "distributed into the stream of commerce" have reached their expiration dates and are  
23 no longer sold.

24           **7. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

25           7.1 This Consent Judgment is a full, final, and binding resolution between ERC, on  
26 behalf of itself, and in the public interest, and Defendants, of any alleged violation of Proposition  
27 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to  
28 lead from the handling, use or consumption of the Covered Products and fully and finally

1 resolves all claims that have been or could have been asserted in this action up to and including  
2 the date of entry of Judgment for failure to provide Proposition 65 warnings for the Covered  
3 Products.

4 ERC, on behalf of itself, and in the public interest, hereby discharges Defendants and  
5 each of their respective officers, directors, shareholders, employees, agents, parent companies,  
6 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers other than private  
7 label customers of Defendants, distributors, wholesalers, retailers, and all other upstream and  
8 downstream entities in the distribution chain down of any Covered Product, and the  
9 predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any  
10 and all claims asserted, or that could have been asserted, in this action arising from or related to  
11 the alleged failure to provide Proposition 65 warnings for the Covered Products regarding lead.

12 **7.2** ERC, on behalf of itself only, hereby releases and discharges the Released Parties  
13 from any and all known and unknown Claims for alleged violations of Proposition 65, or for any  
14 other statutory or common law, arising from or relating to alleged exposures to lead and lead  
15 compounds in the Covered Products as set forth in the Notices. It is possible that other Claims  
16 not known to the Parties arising out of the facts alleged in the Notices of Violation or the  
17 Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf  
18 of itself only, acknowledges that this Consent Judgment is expressly intended to cover and  
19 include all such Claims, including all rights of action therefor. ERC has full knowledge of the  
20 contents of Cal. Civil Code Section 1542. ERC, on behalf of itself only, acknowledges that the  
21 Claims released in Section 8.1 and 8.2 above may include unknown Claims, and nevertheless  
22 waives Cal. Civil Code Section 1542 as to any such unknown claims. Cal. Civil Code Section  
23 1542 reads as follows:

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

27 ERC, on behalf of itself only, acknowledges and understands the significance and  
28 consequences of this specific waiver of Cal. Civil Code Section 1542.

1           7.3    ERC, on one hand, and Defendants, on the other hand, release and waive all  
2 claims they may have against each other for any statements of actions made or undertaken by  
3 them in connection with the Notices of Violation or the Complaint. Provided however, nothing  
4 in Section 7 shall affect or limit any Party's right to seek to enforce the terms of this Consent  
5 Judgment.

6    **8.    SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

9    **9.    GOVERNING LAW**

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

12   **10.   PROVISION OF NOTICE**

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

17   **FOR ENVIRONMENTAL RESEARCH CENTER:**

18   Chris Heptinstall, Executive Director  
19   Environmental Research Center  
20   3111 Camino del Rio North, Suite 400  
21   San Diego, CA 92108

21   Michael Bruce Friend  
22   Law Offices of Michael Freund  
23   1919 Addison Street, Suite 105  
24   Berkeley, CA 94704  
25   Telephone: (510) 540-1992  
26   Facsimile: (510) 540-5543

24   Karen Evans  
25   Coordinating Counsel  
26   Environmental Research Center  
27   4218 Biona Place  
28   San Diego, CA 92116  
29   Telephone: (619) 640-8100

///

Sedgwick

1 **FOR ALLERGY RESEARCH GROUP, INC. AND NUTRICOLOGY, INC.**

2 Fred Salomon  
3 Allergy Research Group, Inc./Nutricology, Inc.  
4 2300 North Loop Road  
5 Alameda, CA 94502

6 Carol Brophy  
7 Sedgwick LLP  
8 333 Bush Street, 30<sup>th</sup> Floor  
9 San Francisco, CA 94104-2834

10 **11. COURT APPROVAL**

11 11.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be void  
12 and have no force or effect.

13 11.2 ERC shall comply with California Health & Safety Code Section 25249.7 (f) and  
14 with Title II of the California Code Regulations, Section 3003.

15 **12. EXECUTION AND COUNTERPARTS**

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

19 **13. DRAFTING**

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

25 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

26 In the event a dispute arises with respect to either Party's compliance with the terms of  
27 this Consent Judgment entered by the Court, the Parties shall meet either in person or by  
28 telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may  
be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the  
event an action or motion is filed, however, the prevailing party may seek to recover costs and  
reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means

1 a party who is successful in obtaining relief more favorable to it than the relief that the other  
2 party was amenable to providing during the parties' good faith attempt to resolve the dispute that  
3 is the subject of such enforcement action.

4 **15. ENTIRE AGREEMENT, AUTHORIZATION**

5 **15.1** This Consent Judgment contains the sole and entire agreement and understanding  
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
7 negotiations, commitments and understandings related hereto. No representations, oral or  
8 otherwise, express or implied, other than those contained herein have been made by any Party.  
9 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to  
10 exist or to bind any of the Parties.

11 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
12 by the Party he or she represents to stipulate to this Consent Judgment, to enter into and execute  
13 this Consent Judgment on behalf of the Party represented, and legally to bind that Party to this  
14 Consent Judgment. The undersigned have read, understand and agree to all of the terms and  
15 conditions of this Consent Judgment. Except as explicitly provided herein, each Party shall bear  
16 its own fees and costs.

17 **16. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
18 **CONSENT JUDGMENT**

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

- 22 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
23 equitable settlement of all matters raised by the allegations of the Complaint, that  
24 the matter has been diligently prosecuted, and that the public interest is served by  
25 such settlement; and  
26 (2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve  
27 the Settlement and approve this Consent Judgment.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO STIPULATED:

ENVIRONMENTAL RESEARCH CENTER

DATED: 9/20/, 2012

By: [Signature]  
Chris Hepstingall, Executive Director

ALLERGY RESEARCH GROUP, INC. and  
NUTRICOLOGY, INC.

DATED: 9/21/12, 2012

[Signature]  
Fred Salomon  
Chief Operating Officer

APPROVED AS TO FORM:

DATED: 9/21/, 2012

LAW OFFICE OF MICHAEL FREUND

By: [Signature MF]  
Michael Freund  
Attorney for Environmental Research Center

DATED: September 20, 2012

SEDGWICK LLP

By: [Signature]  
Carol Brophy  
Attorneys for Allergy Research Group, Inc. and  
Nutricology, Inc.

**ORDER AND JUDGMENT**

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

DATED: \_\_\_\_\_, 2012

\_\_\_\_\_  
Judge, Superior Court of the State of California

Sedgwick



## 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  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

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

### VIA PRIORITY MAIL

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

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

Dear Addressees:

I 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 names of the Companies covered by this Notice that violated Proposition 65 are:

**Allergy Research Group, Inc. and Nutricology, Inc.**

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

**NutriCology Inc. ProGreens with Advanced Probiotic Formula 15 StickPacks 132 g - Lead**  
**NutriCology Inc. ProGreens with Advanced Probiotic Formula 30 Day Supply 265 g - Lead**

EXHIBIT A

January 14, 2011

Page 2

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 Allergy Research Group, Inc.; Nutricology, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Allergy Research Group, Inc. and Nutricology, Inc. 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.

Allergy Research Group, Inc. and Nutricology, Inc. have 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. Allergy Research Group, Inc. and Nutricology, Inc. violated Proposition 65 because the Companies have 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 Allergy Research Group, Inc. and Nutricology, Inc. agree 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 Allergy Research Group, Inc. and Nutricology, Inc. 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 Allergy Research Group, Inc. and Nutricology, Inc.**

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: January 14, 2011



---

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 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  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

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  
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.*

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, 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 Ctr., 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

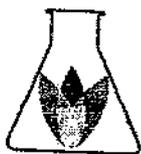
District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

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



**Environmental Research Center**

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

March 11, 2011

**VIA CERTIFIED MAIL**

Current President or CEO  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

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 names of the Companies covered by this Notice that violated Proposition 65 are:

**Allergy Research Group, Inc. and Nutricology, Inc.**

**VIA PRIORITY MAIL**

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

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

**Allergy Research Group Calm/Recharge 250 Grams - Lead**  
**Allergy Research Group PhytoCort 120 Vegetarian Capsules - Lead**  
**Allergy Research Group AllerAid Herbal 90 Tablets - Lead**  
**Allergy Research Group Steady On 300 Grams - Lead**  
**Allergy Research Group Liver Saver 120 Tablets - Lead**  
**Allergy Research Group GastroCleanse with Psyllium Husks 100 Vegetarian Capsules - Lead**  
**NutriCology Inc. Licorice Solid Extract (114g) - Lead**  
**NutriCology Inc. FibroBoost 75 Vegetarian Capsules - Lead**  
**NutriCology Inc. Sugar Balance Formula 90 Vegetarian Capsules - Lead**  
**NutriCology Inc. Chitosan 90 Vegetarian Capsules - Lead**  
**NutriCology Inc. Slumberol 100 Vegetarian Capsules - Lead**  
**NutriCology Inc. SlimGreens Powder 180 grams - Lead**  
**Allergy Research Group Earth Dragon 150 Capsules - Lead**  
**Allergy Research Group Cell Saver 150 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 Allergy Research Group, Inc.; Nutricology, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Allergy Research Group, Inc. and Nutricology, Inc. 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.

Allergy Research Group, Inc. and Nutricology, Inc. have 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. Allergy Research Group, Inc. and Nutricology, Inc. violated Proposition 65 because the Companies have 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 Allergy Research Group, Inc. and Nutricology, Inc. agree 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 Allergy Research Group, Inc. and Nutricology, Inc. 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 Allergy Research Group, Inc. and Nutricology, Inc.**

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: March 11, 2011



---

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 March 11, 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  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

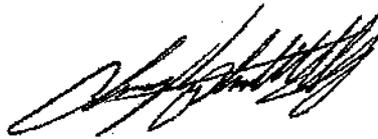
Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

On March 11, 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 March 11, 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 March 11, 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  
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.*

March 11, 2011

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, 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 Ctr., 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 212F  
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

**MICHAEL FREUND**  
ATTORNEY AT LAW  
1919 Addison Street, Suite 105  
BERKELEY, CALIFORNIA 94704-101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

May 9, 2012

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

Dear Alleged Violators 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 Violators 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 Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 an attachment with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Allergy Research Group, Inc. and Nutricology, Inc.**

**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:

**Allergy Research Group ProGreens with Advanced Probiotic Formula - 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

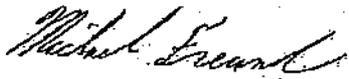
these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 9, 2009, 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 Violators 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 Violators 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 Violations 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 Allergy Research Group Inc. and Nutricology, Inc. and their 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 Allergy Research Group, Inc. and Nutricology, Inc.**

I, Michael Freund, declare:

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

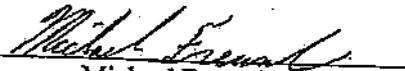
2. I am an attorney for the noticing party.

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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: May 9, 2012

  
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 May 9, 2012, 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 with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Allergy Research Group, Inc.  
2300 North Loop Road  
Alameda, CA 94502

Current President or CEO  
Nutricology, Inc.  
2300 North Loop Road  
Alameda, CA 94502

On May 9, 2012, 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 with the postage fully prepaid 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 May 9, 2012, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on May 9, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

Notice of Violations of California Health & Safety Code §25249.5 et seq.  
May 9, 2012  
Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Room 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Room 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009
District Attorney, Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County Post Office Box 990 Stockton, CA 95201	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 132 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm 800 Los Angeles, CA 90012
District Attorney, Colusa County 547 Market Street Colusa, CA 95932	District Attorney, Merced County 2222 M Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 <sup>rd</sup> Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco City Attorney's Office City Hall, Room 234 1 Drive Carlton B Goodlett Place San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street Eureka, CA 95501	District Attorney, Orange County 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95353	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Avenue, Room 224 Visalia, CA 93291	