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10 Attorneys for Defendant  
11 Promax Nutrition Corporation

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 ENVIRONMENTAL RESEARCH  
15 CENTER, INC.,

16 Plaintiff,

17 v.

18 PROMAX NUTRITION  
19 CORPORATION,

20 Defendant.  
21

Case No. **RG 13699644**

**[PROPOSED] CONSENT JUDGMENT**

22  
23 **1. INTRODUCTION**

24 1.1 On or about October 18, 2013, Plaintiff Environmental Research Center, Inc.  
25 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this  
26 action by filing a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) pursuant to  
27 the provisions of California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
28 California Health and Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to

1 as “Proposition 65”), against Defendant Promax Nutrition Corporation (“Promax”). ERC and  
2 Promax are hereinafter sometimes referred to individually as a “Party” or collectively as the  
3 “Parties”.

4 1.2 ERC is a California non-profit corporation dedicated to, among other causes,  
5 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
6 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
7 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling  
8 this case in the public interest.

9 1.3 Promax is a California corporation, which at all times relevant to this action, has  
10 employed ten or more persons, and is a “person in the course of doing business” within the  
11 meaning of Proposition 65.

12 1.4 On March 25, 2011 and June 1, 2011, pursuant to California Health and Safety  
13 Code § 25249.7(d)(1), ERC served Notices of Violations of Proposition 65 (“Notices of  
14 Violations”) on the California Attorney General, other public enforcers, and Promax. True and  
15 correct copies of the Notices of Violations are attached hereto as Exhibit A. The Notices of  
16 Violations contains allegations that Promax, without giving a required clear and reasonable  
17 warning, has exposed and continues to expose individuals in California to lead, a chemical listed  
18 under Proposition 65 as a carcinogen and reproductive toxin, by manufacturing, marketing,  
19 distributing and/or selling the following three products:

- 20 1) Promax Nutrition Corp. Promax Bar Cookies ‘N Cream,
- 21 2) Promax Nutrition Corp. Promax Bar Double Fudge Brownie, and
- 22 3) Promax Nutrition Corp. Energy Bar German Chocolate Cake.

23 These three products are hereinafter referred to collectively as the “Covered Products” and in the  
24 singular a “Covered Product.” Neither the California Attorney General nor any other public  
25 enforcer has filed suit against Promax with regard to the Covered Products or the alleged  
26 violations.

27 1.5 More than 60 days after service of the Notices of Violations, ERC filed the  
28 Complaint, which is based on the Notices of Violations and contains allegations that Promax has

1 exposed and continues to expose persons in California who use and/or handle the Covered  
2 Products to the chemical lead in excess of the exposure levels allowed under Proposition 65  
3 without first providing clear and reasonable warnings, in violation of California Health and  
4 Safety Code § 25249.6.

5 1.6 Promax denies and disputes the claims of alleged violations of Proposition 65  
6 asserted in the Notices of Violations and the Complaint. Promax maintains that none of the  
7 Covered Products have caused any exposures to lead at levels that require a warning under  
8 Proposition 65.

9 1.7 The Parties enter into this Consent Judgment in order to settle disputed claims  
10 between them and to avoid prolonged and costly litigation.

11 1.8 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,  
12 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or  
13 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be  
14 construed as giving rise to any presumption or inference of admission or concession or waiver of  
15 a defense by Promax as to any fault, wrongdoing or liability whatsoever, including, but not  
16 limited to, any alleged violation of Proposition 65.

17 1.9 Except as expressly provided herein, nothing in this Consent Judgment shall  
18 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or  
19 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,  
20 responsibilities, and duties of any Party to this Consent Judgment.

21 1.10 The "Effective Date" of this Consent Judgment shall be the date this Consent  
22 Judgment is entered by the Court.

23 1.11 The only products covered by this Consent Judgment are the Covered Products,  
24 and the only chemical covered by this Consent Judgment is the chemical lead as related to the  
25 Covered Products only.

26 **2. JURISDICTION AND VENUE**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
28 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that

1 venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment  
2 pursuant to the terms set forth herein.

3 **3. INJUNCTIVE RELIEF**

4 3.1 On and after the Effective Date, Promax shall be permanently enjoined from  
5 manufacturing for sale in California, distributing into California, or directly selling to any  
6 consumer located in California any of the Covered Products (1) without complying with the  
7 warning requirement set forth in Section 3.2 below; or (2) that contain more than 0.5 micrograms  
8 of lead per bar after subtracting out the amount of lead deemed “naturally occurring” for each  
9 ingredient listed in Table 3.3 below. The term “distributing into California,” as used herein,  
10 means to ship any of the Covered Products into California for sale in California or to sell or  
11 provide any of the Covered Products to any person or entity Promax knows intends to or will  
12 ship any of the Covered Products into or sell any of the Covered Products in California.

13 **3.2 Clear and Reasonable Warnings**

14 For Covered Products that are subject to the warning requirement of Section 3.1, Promax  
15 shall provide the following warning as specified below:

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

18 (The text in the brackets in the warning above related to cancer shall be included only with any  
19 of the Covered Products that contain more than 15 micrograms of lead per bar.) The warning  
20 shall be permanently affixed to or prominently printed on the product label with such  
21 conspicuousness, as compared to other words, statements or designs on the label, so as to render  
22 it likely to be read and understood by the ordinary purchaser and/or user of the product under  
23 customary conditions of purchase or use of the product. The warning shall be the same size as  
24 the largest of any other health or safety warnings on the product label and the word  
25 “**WARNING**” shall be in all capital letters and in bold print.

26 **3.3 Calculation of Lead Content**

27 For Purposes of Section 3.1 above and only for purposes of this Consent Judgment, the  
28 amount of lead content deemed “naturally occurring” in each of the Covered Products is the sum

1 of the amounts of “naturally occurring” lead supplied by the quantity of each ingredient listed in  
2 Table 3.3 that is present in each bar. For each ingredient listed in Table 3.3, the amount of lead  
3 deemed “naturally occurring” for the purposes of this Consent Judgment only is listed in Table  
4 3.3 in micrograms of “naturally occurring” lead per gram of the ingredient contained in each bar  
5 of the Covered Products. If Promax seeks to exclude “naturally occurring” amounts of lead  
6 under this Section 3.3 for any of the Covered Products, Promax shall provide to ERC, under the  
7 terms of the confidentiality agreement entered into by the Parties, a separate document to include  
8 a complete list of the ingredients in each such Covered Product and each ingredient’s quantity  
9 per bar in grams (rounded to the nearest one tenth of a gram), including, but not limited to, each  
10 of the ingredients listed in Table 3.3. Promax shall additionally provide to ERC test results or  
11 other data that independently confirms the quantity per bar in grams of each ingredient being  
12 used in each such Covered Product.

13 **TABLE 3.3**

14

<b>Ingredient</b>	<b>Amount of Lead Per Gram of Ingredient Deemed Naturally Occurring for Purposes of this Consent Judgment Only</b>
Calcium (elemental)	0.8 micrograms
Ferrous Fumarate	0.4 micrograms
Magnesium Oxide	0.4 micrograms
Zinc Oxide	8.0 micrograms
Cocoa powder	1.0 micrograms

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20 **3.4 Testing**

21 3.4.1 Beginning on the Effective Date and continuing for a period of four years  
22 thereafter, at least two times per year, Promax shall have tested for lead content three randomly  
23 selected samples from a single lot of each of the Covered Products in the form intended for sale  
24 to the end-user. The term “lot,” as used herein, means one manufacturing cycle. Each lot shall  
25 be designated by a numbers, letters, or a combination of numbers and letters unique to that lot,  
26 and which shall be affixed or printed on each bottle or container of any of the Covered Products  
27 in that lot. Each sample to be tested shall be randomly selected, and shall be identified in  
28

1 Promax's request to the laboratory for testing as being submitted pursuant to this Consent  
2 Judgment.

3 3.4.2 Testing for lead content under Section 3.4 shall be performed using  
4 closed-vessel, microwave-assisted acid digestion employing high-purity reagents, followed by  
5 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of  
6 less than or equal to 0.010 mg/kg; or heat-assisted acid digestion employing high-purity reagents,  
7 followed 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 3.4.3 Testing for lead content under Section 3.4 shall be performed by an  
11 independent third-party laboratory certified by the California Environmental Laboratory  
12 Accreditation Program for the analysis of heavy metals or an independent third-party laboratory  
13 registered with the United States Food & Drug Administration. Promax shall also retain all test  
14 results and documentation for a period of four years from the date of the test.

15 3.4.4 Beginning on the Effective Date and continuing for a period of four years  
16 thereafter, Promax shall arrange for copies of all laboratory reports with results of testing for lead  
17 content under Section 3.4 to be sent by the testing laboratory directly to ERC within ten working  
18 days upon Promax receiving a written request by ERC for such testing results. These reports  
19 shall be deemed and treated by ERC as confidential information under the terms of the  
20 confidentiality agreement entered into by the Parties.

21 3.4.5 Nothing in this Consent Judgment shall limit Promax's ability to conduct,  
22 or require that others conduct, additional testing of the Covered Products, including the raw  
23 materials used in their manufacture.

24 3.4.6 The testing and sampling methodology set forth in Section 3.4 is a result  
25 of negotiation and compromise, and is accepted by the Parties for the purposes of settling,  
26 compromising, and resolving the issues in this Action, including future compliance with Section  
27 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except  
28 for the purposes of determining future compliance with this Consent Judgment.

1           **3.4 Products in the Stream of Commerce**

2           The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products  
3 that Promax puts into the stream of commerce before the Effective Date. On the Effective Date,  
4 Promax shall provide ERC with the last lot number and expiration date for each of the Covered  
5 Products in the stream of commerce as of the Effective Date.

6           **4. SETTLEMENT PAYMENT**

7           **4.1 Total Payment**

8           In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,  
9 ERC’s expenses and costs of litigation, and ERC’s attorney fees, Promax shall pay a total  
10 settlement payment of \$120,000 (“Total Settlement Amount”) to be paid in three equal  
11 installments of \$40,000 each, with the first payment made within ten (10) days after the Effective  
12 Date, the second payment made within forty (40) days after the Effective Date, and the third and  
13 final payment made within seventy (70) days after the Effective Date. Each payment will be  
14 made by a check made payable to “Environmental Research Center – ERC Escrow Account”,  
15 and sent by first-class registered or certified mail, or overnight delivery, directly to ERC at the  
16 following address:

17                     Environmental Research Center  
18                     3111 Camino del Rio North, Suite 400  
19                     San Diego, CA 92108

20 Promax shall also issue a single IRS Federal Tax Form 1099 for the initial payment to ERC.

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

22           **4.2 Civil Penalty**

23           As a portion of the Total Settlement Amount, \$15,892 shall be considered a civil penalty  
24 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$11,919)  
25 of the civil penalties to the Office of Environmental Health Hazard Assessment (“OEHHA”) for  
26 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California  
27 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to  
28 Defendant’s counsel. ERC will retain the remaining 25% (\$3,973) of the civil penalty.

1           **4.3     Payment in Lieu of Further Civil Penalties**

2           As a portion of the Total Settlement Amount, \$47,686 shall be considered a payment to  
3     ERC in lieu of further civil penalties for activities such as (1) funding the investigating,  
4     researching and testing of consumer products that may contain Proposition 65 listed chemicals;  
5     (2) funding grants to California non-profit foundations/entities dedicated to public health; (3)  
6     funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (4)  
7     funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC's  
8     database of lead-free products, Proposition 65-compliant products and contaminated products;  
9     (6) funding to track and catalog Proposition 65-compliant, contamination-free sources of  
10    ingredients used in the products ERC tests; and (7) funding the continued day to day business of  
11    enforcement of Proposition 65 matters which address contaminated ingestible products, similar  
12    to the subject matter of this Action.

13           **4.4     Reimbursement of Expenses and Costs**

14           As a portion of the Total Settlement Amount, \$27,697 shall be considered a  
15    reimbursement to ERC for its reasonable investigation costs associated with the enforcement of  
16    Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this  
17    matter to Promax's attention, litigating and negotiating a settlement in the public interest.

18           **4.5     Attorney Fees**

19           As a portion of the Total Settlement Amount, \$28,725 shall be considered a payment to  
20    ERC for its attorneys' fees of Philip T. Emmons (\$27,112.50) and Karen A. Evans (\$1,612.50).

21           **5.     COSTS AND FEES**

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

24           **6.     RELEASE**

25           6.1     ERC, acting on its own behalf and in the public interest, releases Promax and its  
26    officers, directors, shareholders, employees, agents, representatives, parents, subsidiaries,  
27    divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and attorneys, and  
28    suppliers, manufacturers, distributors, wholesalers, retailers and all other entities in the

1 distribution chain of the Covered Products, but excluding private label customers (“Released  
2 Parties”) from all claims for violations of Proposition 65 up through the Effective Date based on  
3 exposure to lead from the Covered Products as set forth in the Notices of Violations and the  
4 Complaint.

5 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with  
6 Proposition 65 with respect to consumer exposures to lead from the Covered Products as set  
7 forth in the Notices of Violations and the Complaint.

8 6.3 ERC on behalf of itself only, on the one hand, and Promax, on the other hand,  
9 release and waive all claims they may have against each other and their respective officers,  
10 directors, employees, agents, representatives and attorneys for any statements or actions made or  
11 undertaken by them or their respective officers, directors, employees, agents, representatives and  
12 attorneys in connection with the Notices of Violations or this action.

13 6.4 Nothing in this release is intended to apply to any occupational or environmental  
14 exposures arising under Proposition 65, nor shall it apply to any of Promax’s products other than  
15 the Covered Products.

## 16 **7. MOTION FOR COURT APPROVAL**

17 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,  
18 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California  
19 Code of Regulations § 3000, *et seq.* This motion shall be served upon Promax and upon the  
20 California Attorney General’s Office. Promax and ERC shall use their best efforts to support  
21 entry of this Consent Judgment in the form submitted to the Court for approval.

22 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the  
23 California Attorney General objects in writing to any term in this Consent Judgment or files an  
24 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely  
25 manner prior to the hearing on the motion. If the concern of the California Attorney General is  
26 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent  
27 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph  
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1 17 below and notice to the California Attorney General's Office, and upon such notice this  
2 Consent Judgment shall be null and void.

3 7.3 This Consent Judgment shall be effective only after it has been entered by the  
4 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for  
5 any purpose.

6 **8. RETENTION OF JURISDICTION**

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

9 **9. MODIFICATION OF CONSENT JUDGMENT**

10 This Consent Judgment after its entry by the Court may be modified only upon written  
11 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

12 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO  
13 RESOLVE DISPUTES**

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

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

5 **12. GOVERNING LAW**

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

8 **13. RELATION TO OTHER ACTIONS**

9 This Consent Judgment shall have no application or effect on Promax for sales of the  
10 Covered Products or other products sold by Promax to consumers outside the State of California.

11 **14. DRAFTING**

12 The terms of this Consent Judgment have been reviewed by the respective legal counsel  
13 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the  
14 terms and conditions with its legal counsel. The Parties agree that, in any subsequent  
15 interpretation or construction of this Consent Judgment, no inference, assumption or presumption  
16 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,  
17 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or  
18 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the  
19 Parties participated equally in the preparation and drafting of this Consent Judgment.

20 **15. ENTIRE AGREEMENT**

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

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1 **16. EXECUTION IN COUNTERPARTS**

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

5 **17. NOTICES**

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

8 **FOR ERC:**

9 Chris Heptinstall, Executive Director  
10 Environmental Research Center  
11 3111 Camino Del Rio North, Suite 400  
12 San Diego, CA 92108

13 Philip T. Emmons  
14 Law Office of Philip T. Emmons  
15 1990 North California Blvd., 8<sup>th</sup> Floor  
16 Walnut Creek, CA 94596-3742

17 Karen A. Evans  
18 Law Office of Karen A. Evans  
19 4218 Biona Place  
20 San Diego, CA 92116

21 **FOR DEFENDANTS:**

22 Simon Goode  
23 CEO and President  
24 Promax Nutrition Corp.  
25 100 Bayview Circle  
26 Suite 200  
27 Newport Beach, CA 92660

28 Sarah Esmaili  
Arnold & Porter LLP  
Three Embarcadero Center, 7<sup>th</sup> Floor  
San Francisco, CA 94111

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

2 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is  
3 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment  
4 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,  
5 and to legally bind that Party to this Consent Judgment. Each person signing this Consent  
6 Judgment on behalf of a Party represents and warrants that he or she has read and understands  
7 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on  
8 behalf of that Party.

9 **IT IS SO STIPULATED:**

10 Dated: 10/14/13

ENVIRONMENTAL RESEARCH CENTER, INC.

11 By:   
12 Chris Heptinstall  
13 Executive Director

14 Dated: 10/14/13

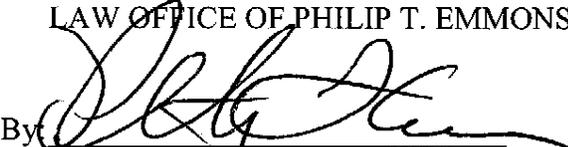
PROMAX NUTRITION CORPORATION

15 By:   
16 Name: Simon Goode  
17 Title: CEO and President

18 **APPROVED AS TO FORM:**

19 Dated: 10/14/13

LAW OFFICE OF PHILIP T. EMMONS

20 By:   
21 Philip T. Emmons  
22 Attorney for Plaintiff  
23 ENVIRONMENTAL RESEARCH CENTER, INC.

24 Dated: 10/14/13

ARNOLD & PORTER LLP

25 By:   
26 Sarah Esmaili  
27 Attorney for Defendant  
28 PROMAX NUTRITION CORPORATION

**ORDER AND JUDGMENT**

1                   Based on the Parties' stipulation, and good cause appearing therefor, this Consent  
2 Judgment is approved and judgment is hereby entered according to its terms.

3 IT IS SO ORDERED, ADJUDGED AND DECREED.  
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5 Dated: \_\_\_\_\_  
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\_\_\_\_\_  
7 Judge of the Superior Court

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**EXHIBIT A**

LAW OFFICE OF  
**PHILIP T. EMMONS**  
208 Normandy Lane  
Walnut Creek, CA 94598  
Tel: (925) 349-4029  
E-Mail: p-emmons@hotmail.com

March 25, 2011

**VIA CERTIFIED MAIL**

Current CEO or President  
Promax Nutrition Corporation  
100 Bayview Circle, Suite 200  
Newport Beach, CA 92660

CSC – Lawyers Incorporating Service  
(Promax Nutrition Corporation’s Registered  
Agent for Service of Process)  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

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 represent the Environmental Research Center (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this notice that violated Proposition 65 (hereinafter “the Violators”) is:

**Promax Nutrition Corporation**

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

**Promax Nutrition Corp. Promax Bar Cookies ‘N Cream (75g) - Lead**  
**Promax Nutrition Corp. Promax Bar Double Fudge Brownie (75g) – 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.

**EXHIBIT A**

March 25, 2011

Page 2

This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to each of the Violators.

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to the identified chemicals. Each of these ongoing violations has occurred on every day since March 25, 2011 as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194. However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Philip T. Emmons, Esq.

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Promax Nutrition Corporation and its Registered Agent for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Promax Nutrition Corporation**

I, Philip T. Emmons, 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 25, 2011

---

Philip T. Emmons

**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 25, 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 CEO or President  
Promax Nutrition Corporation  
100 Bayview Circle, Suite 200  
Newport Beach, CA 92660

CSC – Lawyers Incorporating Service  
(Promax Nutrition Corporation’s Registered  
Agent for Service of Process)  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

On March 25, 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 25, 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 25, 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  
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District Attorney, Colusa County  
547 Market Street  
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District Attorney, Contra Costa County  
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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  
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District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
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District Attorney, Madera County  
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District Attorney, Marin County  
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San Rafael, CA 94903

District Attorney, Mariposa County  
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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

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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 25, 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  
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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

LAW OFFICE OF  
**PHILIP T. EMMONS**  
208 Normandy Lane  
Walnut Creek, CA 94598  
Tel: (925) 349-4029  
E-Mail: p-emmons@hotmail.com

June 1, 2011

**VIA CERTIFIED MAIL**

Current CEO or President  
Promax Nutrition Corporation  
100 Bayview Circle, Suite 200  
Newport Beach, CA 92660

**VIA PRIORITY MAIL**

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

CSC – Lawyers Incorporating Service  
(Promax Nutrition Corporation’s Registered  
Agent for Service of Process)  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

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

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

Dear Addressees:

I represent the Environmental Research Center (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this notice that violated Proposition 65 (hereinafter “the Violators”) is:

**Promax Nutrition Corporation**

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

**Promax Nutrition Corp. Energy Bar German Chocolate Cake - Lead**

June 1, 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 and lead compounds as chemicals known to cause cancer.

This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to each of the Violators.

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to the identified chemicals. Each of these ongoing violations has occurred on every day since June 1, 2008 as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194. ERC's Executive Director is Chris Heptinstall. However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Philip T. Emmons, Esq.

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

June 1, 2011

Page 3

cc: Karen Evans

**Attachments**

Certificate of Merit

Certificate of Service

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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.
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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: June 1, 2011

---

Philip T. Emmons

**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 June 1, 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:

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Executed on June 1, 2011, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

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

June 1, 2011

Page 6

**Service List**

District Attorney, Alameda County  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 1, 2011

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