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18 Attorney for Defendant
19 BIOTICS RESEARCH CORPORATION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF MARIN

22 ENVIRONMENTAL RESEARCH
23 CENTER, a California non-profit
24 corporation,
25
26 Plaintiff,
27
28 v.
29
30 BIOTICS RESEARCH CORPORATION,
31
32 Defendant.

CASE NO. CIV1304497
[PROPOSED] STIPULATED
[PROPOSED] CONSENT JUDGMENT; [PROPOSED]
[PROPOSED] ORDER
Health & Safety Code § 25249.5 et seq.
Action Filed: November 1, 2013
Trial Date: None set

33 1. INTRODUCTION

34 1.1 On November 1, 2013, Plaintiff Environmental Research Center ("ERC"), a
35 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint")
2 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
3 ("Proposition 65"), against Biotics Research Corporation ("Biotics" or "Defendant"). In this
4 action, ERC alleges that the products manufactured, distributed or sold by Biotics, as more
5 fully described below, contain lead, a chemical listed under Proposition 65 as a carcinogen and
6 reproductive toxin, and that such products expose consumers at a level requiring a Proposition
7 65 warning. These products are:

- 8 1) Biotics Research Corporation Histoplex
- 9 2) Biotics Research Corporation HistoPlex-AB
- 10 3) Biotics Research Corporation Colon Plus
- 11 4) Biotics Research Corporation NitroGreens
- 12 5) Biotics Research Corporation NutriClear
- 13 6) Biotics Research Corporation Colon-Plus Caps
- 14 7) Biotics Research Corporation FC-Cidal
- 15 8) Biotics Research Corporation NutriClear Berry
- 16 9) Biotics Research Corporation UltraVir-X
- 17 10) Biotics Research Corporation Dysbiocide
- 18 11) Biotics Research Corporation Bio-HPF
- 19 12) Biotics Research Corporation KappArest
- 20 13) Biotics Research Corporation Rice Protein Concentrate

21
22 (collectively, the "Covered Products"). ERC and Biotics are referred to individually as a "Party"
23 or collectively as the "Parties."

24 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
25 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
26 and toxic chemicals, facilitating a safe environment for consumers and employees, and
27 encouraging corporate responsibility.
28

1 1.3 Biotics is a business entity that employed ten or more persons. Defendant
2 manufactures and sells the Covered Products.

3 1.4 The Complaint is based on allegations contained in ERC's Notice of Violation,
4 dated January 18, 2013 (the "Notice of Violation"), that was served on the California Attorney
5 General, other public enforcers, and Defendant. A true and correct copy of the Notice of
6 Violation is attached as Exhibit A. More than 60 days have passed since the Notice of
7 Violation was mailed, and no designated governmental entity has filed a complaint against
8 Biotics with regard to the Covered Products or the alleged violations.

9 1.5 ERC's Notice of Violation and the Complaint allege that use of the Covered
10 Products exposes persons in California to lead without first providing clear and reasonable
11 warnings in violation of California Health and Safety Code section 25249.6.

12 1.6 The Parties have entered into this Consent Judgment in order to settle,
13 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
14 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
15 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
16 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
17 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
18 this Consent Judgment shall be construed as an admission by Defendant or ERC of any fact,
19 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed
20 as an admission by Defendant or ERC of any fact, issue of law, or violation of law, at any time,
21 for any purpose.

22 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall
23 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
24 other or future legal proceeding unrelated to these proceedings.

25 1.8 The Effective Date of this Consent Judgment is the date on which it is entered as
26 a Judgment by this Court.
27
28

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
4 over Defendant as to the acts alleged in the Complaint, that venue is proper in Marin County, and
5 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
6 claims which were or could have been asserted in this action based on the facts alleged in the
7 Notice of Violation and the Complaint.
8

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

10 **3.1** Beginning on the Effective Date, Defendant shall not manufacture for sale in the
11 State of California, distribute into the State of California, or directly sell to a consumer in the
12 State of California, any Covered Products which expose a person to a daily dose of lead more
13 than 0.5 micrograms per day when the maximum suggested dose is taken as directed on the
14 Covered Product's label, unless each such unit of the Covered Product meets the warning
15 requirements under Section 3.2. As used in this Consent Judgment, the term "distribute into the
16 State of California" shall mean to directly ship a Covered Product into California for sale in
17 California or to sell a Covered Product to a distributor that Defendant knows will sell the
18 Covered Product in California.
19

20 **3.2 Clear and Reasonable Warnings**

21 If Defendant provides a warning for Covered Products pursuant to Section 3.1, Defendant must
22 provide the following warning:

23 **WARNING: This product contains a chemical known to the State of**

24 **California to cause [cancer and] birth defects or other reproductive harm.**

25 Defendant shall use the term "cancer" in the warning only if the maximum daily dose
26 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
27 the quality control methodology set forth in Section 3.3.
28

1 Defendant shall provide the warning on all Covered Products that Defendant ships into
2 California that when tested in accordance with Section 3.3 have a lead level of more than 0.5
3 micrograms per day when the maximum suggested dose is taken as directed on the Covered
4 Product's label. The word "WARNING" shall be in all capital letters and in bold print. No other
5 statements about Proposition 65 or lead may accompany the warning. Defendant shall not provide
6 any general or "blanket" warning regarding Proposition 65.
7

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

13 3.3 Calculation of Lead Levels; Testing and Quality Control Methodology

14 3.3.1 For purposes of this Consent Judgment, daily lead exposure levels shall
15 be measured in micrograms, and shall be calculated using the following formula: micrograms
16 of lead per gram of product, multiplied by grams of product per serving of the product (using
17 the largest serving size appearing on the product label), multiplied by servings of the product
18 per day (using the largest number of servings in a recommended dosage appearing on the
19 product label), which equals micrograms of lead exposure per day.
20

21 3.3.2 All testing pursuant to this Consent Judgment shall be performed using a
22 laboratory method that complies with the performance and quality control factors appropriate
23 for the method used, including limit of detection, limit of qualification, accuracy, and precision
24 and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
25 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
26 method subsequently agreed upon in writing by the Parties.
27

28 3.3.3 All testing pursuant to this Consent Judgment shall be performed by an
independent third-party laboratory certified by the California Environmental Laboratory

1 Accreditation Program for the analysis of heavy metals, by an independent third-party
2 laboratory that is registered with the United States Food & Drug Administration, or by
3 Defendant. Defendant may perform all testing pursuant to this Consent Judgment itself only if
4 Defendant provides, in an attachment to the test results Defendant provides to ERC,
5 information or data demonstrating that its laboratory meets the requirements in Section 3.3.2
6 and this Section 3.3.3. Nothing in this Consent Judgment shall limit Defendant's ability to
7 conduct, or require that others conduct, additional testing of the Covered Products, including
8 the raw materials used in their manufacture.
9

10 3.3.4 Defendant shall itself conduct or shall arrange, for at least four
11 consecutive years and at least once per year beginning from the Effective Date, for the lead
12 testing of five randomly selected samples of each Covered Product in the form intended for sale
13 to the end-user to be distributed or sold to California. Defendant shall continue testing so long
14 as the Covered Products are sold in California or sold to a third party for retail sale in
15 California. If tests conducted pursuant to this Section 3.3 demonstrate that no warning is
16 required for a Covered Product during each of four consecutive years, then the testing
17 requirements of this Section will no longer be required as to that Covered Product. However, if
18 after the four-year period, Defendant changes ingredient suppliers for any of the Covered
19 Products and/or reformulates any of the Covered Products, Defendant shall test that Covered
20 Product at least once after such change is made, and send those test results to ERC within 10
21 working days of receiving the test results. The testing requirements discussed in this Section
22 3.3 are not applicable to any Covered Product for which Defendant has provided the warning as
23 specified in Section 3.2.

24 3.3.5 Once per year, beginning from the Effective Date and continuing for a
25 period of five years thereafter, Defendant shall arrange for copies of all laboratory reports with
26 results of testing for lead content under this Section 3.3 for that year to be automatically sent by
27 the testing laboratory directly to ERC within ten working days after completion of that testing.
28

1 These reports shall be deemed and treated by ERC as confidential information under the terms
2 of the confidentiality agreement entered into by the Parties. Defendant shall retain all test
3 results and documentation for a period of two (2) years past the date of each test.

4 **4. SETTLEMENT PAYMENT**

5 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,
6 attorney's fees, and costs, Defendant shall make a total payment of \$85,000.00 by check
7 within ten business days of receiving the Notice of Entry of Judgment. Said payment shall
8 be for the following:

9
10 4.1 \$14,708.00 shall be payable as civil penalties pursuant to California Health and
11 Safety Code section 25249.7(b)(1). Of this amount, \$11,031.00 shall be payable to the Office
12 of Environmental Health Hazard Assessment ("OEHHA") and \$3,677.00 shall be payable to
13 Environmental Research Center. California Health and Safety Code section 25249.12(c)(1) &
14 (d). Defendant shall send both civil penalty payments to ERC's counsel who will be
15 responsible for forwarding the civil penalty.

16 4.2 \$16,274.00 shall be payable to Environmental Research Center as reimbursement
17 to ERC for (A) reasonable costs associated with the enforcement of Proposition 65 and other
18 costs incurred as a result of work in bringing this action; and (B) \$44,118.00 shall be payable to
19 Environmental Research Center in lieu of further civil penalties, for the day-to-day business
20 activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing,
21 researching and testing consumer products that may contain Proposition 65 chemicals, focusing
22 on the same or similar type of ingestible products that are the subject matter of the current
23 action; (2) the continued monitoring of past consent judgments and settlements to ensure
24 companies are in compliance with Proposition 65; and (3) giving a donation of \$2,198.00 to the
25 Woman's Voices For The Earth to address reducing toxic chemical exposures in California.

26 4.3 \$9,900.00 shall be payable to Michael Freund as reimbursement of ERC's
27 attorney's fees.
28

1 4.4 Defendant shall mail or deliver the payments in this Section by check to
2 Michael Freund & Associates at the address stated in Section 11. Defendant will be provided
3 with taxpayer identification information to enable Defendant to process the payments.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 5.1 This Consent Judgment may be modified only (i) by written stipulation of the
6 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
7 judgment.

8 5.2 Before filing an application with the Court for a modification of this Consent
9 Judgment, the Parties shall meet and confer with each other to determine whether each will
10 consent to the proposed modification. If a proposed modification is agreed upon, then the
11 Parties will present the modification to the Court by means of a stipulated modification to the
12 Consent Judgment. Grounds for considering a modification shall include any that are
13 permitted by law.
14

15 5.3 In the event that Defendant initiates or otherwise requests a modification under
16 Section 5.1, Defendant shall reimburse ERC its costs and reasonable attorney's fees for the
17 time spent in the meet-and-confer process and filing and arguing a joint motion or application
18 in support of a modification of the Consent Judgment.

19 5.4 Where the meet-and-confer process does not lead to a joint motion or
20 application in support of a modification of the Consent Judgment, then either Party may seek
21 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs
22 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
23 means a party who is successful in obtaining relief more favorable to it than the relief that the
24 other party was amenable to providing during the Parties' good faith attempt to resolve the
25 dispute that is the subject of the modification.
26
27
28

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

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

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

8 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
9 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
10 inform Defendant in a reasonably prompt manner of its test results, including information
11 sufficient to permit Defendant to identify the Covered Products at issue. Defendant shall,
12 within thirty days following such notice, provide ERC with testing information, from an
13 independent third-party laboratory or its own laboratory that meets the requirements of
14 Sections 3.3.2 and 3.3.3, demonstrating Defendant's compliance with this Consent Judgment,
15 if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any
16 further legal action.
17

18 **7. APPLICATION OF CONSENT JUDGMENT**

19 This Consent Judgment is a full, final, and binding resolution between the Parties and their
20 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
21 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
22 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
23 application to Covered Products which are distributed or sold by Defendant exclusively outside
24 the State of California. This Consent Judgment shall terminate without further action five (5) years
25 after the Effective Date.
26
27
28

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
3 behalf of itself and in the public interest, and Defendant, of any alleged violation of
4 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings
5 of exposure to lead from the handling, use, or consumption of the Covered Products and fully
6 resolves all claims that have been or could have been asserted in this action up to and
7 including the Effective Date for failure to provide Proposition 65 warnings for the Covered
8 Products. ERC, on behalf of itself and in the public interest, hereby discharges Defendant and
9 its respective officers, directors, shareholders, employees, agents, parent companies,
10 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not including
11 private label customers of Defendant), distributors, wholesalers, retailers, and all other
12 upstream and downstream entities in the distribution chain of any Covered Product, and the
13 predecessors, successors and assigns of any of them (collectively, the "Released Parties"),
14 from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
15 penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged
16 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the
17 Covered Products regarding lead as set forth in the Notice of Violation and the Complaint.

18
19 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
20 Parties from all known and unknown claims for alleged violations of Proposition 65 arising
21 from or relating to alleged exposures to lead in the Covered Products as set forth in the Notice
22 of Violation. It is possible that other claims not known to the Parties arising out of the facts
23 alleged in the Notice of Violation or the Complaint and relating to the Covered Products will
24 develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent
25 Judgment is expressly intended to cover and include all such claims, including all rights of
26 action therefore. ERC has full knowledge of the contents of California Civil Code Section
27 1542. ERC, on behalf of itself only, acknowledges that the claims released in Section 8.1 and
28

1 Section 8.2 may include unknown claims, and nevertheless waives California Civil Code
2 Section 1542 as to any such unknown claims. California Civil Code Section 1542 reads as
3 follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
7 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
8 OR HER SETTLEMENT WITH THE DEBTOR.
9

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

12 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
14 to lead in the Covered Products as set forth in the Notice of Violation and the Complaint.

15 **8.4** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65, nor shall it apply to any of Defendant's
17 products other than the Covered Products.

18 **8.5** ERC and Defendant each release and waive all claims they may have against
19 each other for any statements or actions made or undertaken by them in connection with the
20 Notice of Violation or the Complaint; provided, however, that nothing in Section 8 shall affect
21 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

22 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

25 **10. GOVERNING LAW**

26 The terms and conditions of this Consent Judgment shall be governed by and construed in
27 accordance with the laws of the State of California.
28

1 **11. PROVISION OF NOTICE**

2 All notices required to be given to either Party to this Consent Judgment by the other shall be in
3 writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail;
4 (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.
5

6 **FOR ENVIRONMENTAL RESEARCH CENTER:**

7
8 Chris Heptinstall, Executive Director
9 Environmental Research Center
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108

12 With a copy to:

13 Michael Freund
14 Michael Freund & Associates
15 1919 Addison Street, Suite 105
16 Berkeley, California 94704-1101
17 Telephone: (510) 540-1992
18 Facsimile: (510) 540-5543
19 freund1@aol.com

20 **FOR BIOTICS RESEARCH CORPORATION**

21 Denis DeLuca
22 Biotics Research Corporation
23 6801 Biotics Research Drive
24 Rosenberg, Texas 77471

25 With a copy to:

26 Dennis M. Gronek
27 Gronek & Associates
28 93rd Floor-Willis Tower
Chicago, Illinois 60606
Telephone: (312) 655-1800
Facsimile: (312) 655-1808
fdalaw@gronekassociates.com

1 **12. COURT APPROVAL**

2 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be
3 void and have no force or effect.

4 12.2 ERC shall comply with California Health and Safety Code section 25249.7(f)
5 and with Title II of the California Code Regulations, Section 3003.

6 **13. EXECUTION AND COUNTERPARTS**

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

10
11 **14. DRAFTING**

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

17
18 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

19 If a dispute arises with respect to either Party's compliance with the terms of this Consent
20 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
21 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
22 such a good faith attempt to resolve the dispute beforehand.

23
24 **16. ENTIRE AGREEMENT, AUTHORIZATION**

25 16.1 This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, and any and all
27 prior discussions, negotiations, commitments and understandings related hereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred
2 to herein, shall be deemed to exist or to bind any Party.

3 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
5 explicitly provided herein, each Party shall bear its own fees and costs.

6 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
7 **CONSENT JUDGMENT**

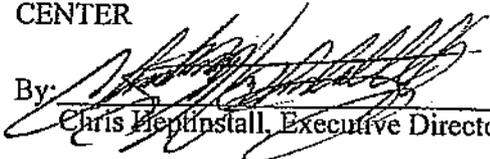
8 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
9 request the Court to fully review this Consent Judgment and, being fully informed regarding the
10 matters which are the subject of this action, to:

- 11 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
12 settlement of all matters raised by the allegations of the Complaint, that the matter has been
13 diligently prosecuted, and that the public interest is served by such settlement; and
14 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
15 approve the settlement, and approve this Consent Judgment.
16
17
18

19 **IT IS SO STIPULATED:**

20
21 Dated: 12/19/, 2013

22 ENVIRONMENTAL RESEARCH
23 CENTER

24 By: 

25 Chris Hepinstall, Executive Director
26
27
28

Dated: Dec 30, 2013

BIOTICS RESEARCH CORPORATION

By: [Signature]

APPROVED AS TO FORM:

Dated: 12/31/, 2013

MICHAEL FREUND & ASSOCIATES

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

Dated: Dec 30, 2013

GRONEK & ASSOCIATES

By: [Signature]
Dennis M. Gronek
Attorney for Biotics Research
Corporation

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; _____, 2013

Judge of the Superior Court

EXHIBIT A

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

January 18, 2013

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by reducing 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 as California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide the required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of Proposition 65, 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 attached with the copy of this letter served to the alleged Violator identified below.

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

Biotics Research Corporation

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:

- Biotics Research Corporation Histoplex – Lead
- Biotics Research Corporation HistoPlex-AB – Lead
- Biotics Research Corporation Colon Plus – Lead
- Biotics Research Corporation NitroGreens – Lead
- Biotics Research Corporation NutriClear – Lead
- Biotics Research Corporation Colon-Plus Caps – Lead
- Biotics Research Corporation FC-Cidal – Lead
- Biotics Research Corporation NutriClear Berry – Lead
- Biotics Research Corporation UltraVir-X – Lead
- Biotics Research Corporation Dysbiocide – Lead
- Biotics Research Corporation Bio-HPF – Lead

- **Biotics Research Corporation KappArest- Lead**
- **Biotics Research Corporation Rice Protein Concentrate - Lead**

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 18, 2010, as well as every day since the products were introduced into the California marketplace, and will continue every day until the Violator provides clear and reasonable warnings to product purchasers and users or until these known toxic chemicals are either removed from the products or reduced to allowable levels. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that those persons are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as 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 Biotics Research Corporation and their Registered Agent)
- Additional Information Supporting Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Biotics Research Corporation

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 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 18, 2013



Michael Freund

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

January 18, 2013

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On January 18, 2013, 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 parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Biotics Research Corporation
P.O. Box 36888
Houston, TX 77236

Registered Agent of Biotics Research Corporation
6801 Biotics Research Drive
Rosenberg, TX 77471

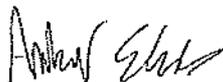
Current President or CEO
Biotics Research Corporation
6801 Biotics Research Drive
Rosenberg, TX 77471

On January 18, 2013, 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 at a U.S. 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 January 18, 2013, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 18, 2013, in Fort Oglethorpe, Georgia.



Amber Schaub

Service List

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

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

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

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

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

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

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

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

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

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

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

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 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, Suite 18000
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

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Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
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204 S Court Street, Room 202
Alturas, CA 96101-4020

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Bridgeport, CA 93517

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

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 West Civic Center Drive
Santa Ana, CA 92701

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
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Cir., 3rd Floor
Redwood City, CA 94063

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1112 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
1355 West Street
Redding, CA 96001

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PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
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Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

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

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
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District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
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Sonora, CA 95370

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Ventura, CA 93009

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

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

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

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

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113