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NUTRITION, INC. dba BEAST SPORTS
12 NUTRITION

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15 **ENVIRONMENTAL RESEARCH**
16 **CENTER, a California non-profit**
17 **corporation**

18 Plaintiff,

19 v.

20 **ULTRA-LAB NUTRITION, INC. dba**
21 **BEAST SPORTS NUTRITION and DOES**
22 **1-100**

22 Defendants.

CASE NO. 14733269

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 et seq.

Action Filed: July 16, 2014

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On July 16, 2014, Plaintiff Environmental Research Center ("ERC"), a non-
26 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing
27 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
28 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 ("Proposition 65"), against Ultra-Lab Nutrition, Inc. dba Beast Sports Nutrition and Does 1-100
2 (collectively "Beast Sports"). In this action, ERC alleges that a number of products
3 manufactured, distributed or sold by Beast Sports contain lead, a chemical listed under
4 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
5 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a "Covered Product" or collectively as "Covered Products") are: 1) Beast Sports
7 Nutrition Super Test, 2) Beast Sports Nutrition Beast Mode Beast Punch Flavor, 3) Beast Sports
8 Nutrition Amphetamine Orange Cooler Flavor, and 4) Beast Sports Nutrition Beast Mode Pink
9 Lemonade Flavor.

10 1.2 ERC and Beast Sports are hereinafter referred to individually as a "Party" or
11 collectively as the "Parties."

12 1.3 ERC is a California non-profit corporation dedicated to, among other causes,
13 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
14 and toxic chemicals, facilitating a safe environment for consumers and employees, and
15 encouraging corporate responsibility.

16 1.4 ERC alleges that Beast Sports is a business entity that has employed ten or more
17 persons during a time period that is relevant to this action, and qualifies as a "person in the course
18 of business" within the meaning of Proposition 65. Beast Sports disputes this contention. Beast
19 Sports manufactures, distributes and sells the Covered Products.

20 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
21 dated January 31, 2014, that was served on the California Attorney General, other public
22 enforcers, and Beast Sports ("Notice"). A true and correct copy of the Notice is attached as
23 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
24 Notice was mailed and uploaded to the Attorney General's website, and no designated
25 governmental entity has filed a complaint against Beast Sports with regard to the Covered
26 Products or the alleged violations.

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

1 of California Health and Safety Code section 25249.6. Beast Sports denies all material
2 allegations contained in the Notice and Complaint.

3 1.7 The Parties have entered into this Consent Judgment in order to settle,
4 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
5 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
6 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
7 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
8 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
9 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
10 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
11 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
12 purpose.

13 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
15 other or future legal proceeding unrelated to these proceedings.

16 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
17 a Judgment by this Court.

18 1.10 As a result of ERC's NOV of January 31, 2014, Beast Sports has agreed to
19 commence providing Proposition 65 warnings on its products pursuant to Section 3 below.

20 **2. JURISDICTION AND VENUE**

21 For purposes of this Consent Judgment and any further court action that may become
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
23 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
24 over Beast Sports as to the acts alleged in the Complaint, that venue is proper in Alameda
25 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
26 resolution of all claims up through and including the Effective Date which were or could have
27 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

2 **3.1 Beginning on the Effective Date**, at all times that Beast Sports qualifies as a
3 "person in the course of business" within the meaning of Proposition 65, Beast Sports shall be
4 permanently enjoined from manufacturing for sale in the State of California, "Distributing into
5 the State of California," or directly selling in the State of California, any Covered Product
6 which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per
7 day of lead when the maximum suggested dose is taken as directed on the Covered Product's
8 label, unless it meets the warning requirements under Section 3.2.

9 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
10 of California" shall mean to directly ship a Covered Product into California for sale in
11 California or to sell a Covered Product to a distributor that Beast Sports knows will sell the
12 Covered Product in California.

13 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
14 Level" shall be measured in micrograms, and shall be calculated using the following formula:
15 micrograms of lead per gram of product, multiplied by grams of product per serving of the
16 product (using the largest serving size appearing on the product label), multiplied by servings
17 of the product per day (using the largest number of servings in a recommended dosage
18 appearing on the product label), which equals micrograms of lead exposure per day.

19 **3.2 Clear and Reasonable Warnings**

20 If Beast Sports is required to provide a warning pursuant to Section 3.1, the following
21 warning must be utilized:

22 **WARNING: This product contains [a] chemical[s] known to the State of California to**
23 **cause [cancer and] birth defects or other reproductive harm.**

24 Beast Sports shall use the phrase "cancer and" in the warning only if the maximum daily dose
25 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
26 the quality control methodology set forth in Section 3.4.

27 The warning shall be securely affixed to or printed upon the container or label of each
28 Covered Product. In addition, for Covered Products sold over Beast Sports' website, the

1 warning shall appear on Beast Sports' checkout page prior to completing checkout on Beast
2 Sports' website when a California delivery address is indicated for any purchase of any Covered
3 Product.

4 The warning shall be at least the same size as the largest of any other health or safety
5 warnings also appearing on its website or on the label or container of Beast Sports' product
6 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
7 statements about Proposition 65 or lead may accompany the warning.

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

12 3.3 Reformulated Covered Products

13 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
14 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
15 contains no more than 0.5 micrograms of lead per day as determined by the quality control
16 methodology described in Section 3.4.

17 3.4 Testing and Quality Control Methodology

18 3.4.1 Beginning within one year of the Effective Date, at all times that Beast
19 Sports qualifies as a "person in the course of business" within the meaning of Proposition 65,
20 Beast Sports shall arrange for lead testing of the Covered Products at least once a year for a
21 minimum of three consecutive years by arranging for testing of five randomly selected samples
22 of each of the Covered Products, in the form intended for sale to the end-user, which Beast
23 Sports intends to sell or is manufacturing for sale in California, directly selling to a consumer
24 in California or "Distributing into California." The testing requirement does not apply to any of
25 the Covered Products for which Beast Sports has provided the warning specified in Section 3.2.
26 If tests conducted pursuant to this Section demonstrate that no warning is required for a
27 Covered Product during each of three consecutive years, then the testing requirements of this
28 Section will no longer be required as to that Covered Product. However, if during or after the

1 three-year testing period, Beast Sports changes ingredient suppliers for any of the Covered
2 Products and/or reformulates any of the Covered Products, Beast Sports shall test that Covered
3 Product annually for at least three (3) consecutive years after such change is made.

4 3.4.2 For purposes of measuring the "Daily Lead Exposure Level", the highest
5 lead detection result of the five (5) randomly selected samples of the Covered Products will be
6 controlling.

7 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
12 method subsequently agreed to in writing by the Parties.

13 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
14 independent third party laboratory certified by the California Environmental Laboratory
15 Accreditation Program or an independent third-party laboratory that is registered with the
16 United States Food & Drug Administration.

17 3.4.5 Nothing in this Consent Judgment shall limit Beast Sports' ability to
18 conduct, or require that others conduct, additional testing of the Covered Products, including
19 the raw materials used in their manufacture.

20 3.4.6 Beginning on the Effective Date and continuing for a period of three
21 years, Beast Sports shall arrange for copies of all laboratory reports with results of testing for
22 lead content under Section 3.4.1 to be automatically sent by the testing laboratory directly to
23 ERC within ten days after completion of the testing. Beast Sports shall retain all test results and
24 documentation for a period of five years from the date of each test.

25 4. SETTLEMENT PAYMENT

26 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
27 penalties, attorney's fees, and costs, Beast Sports shall make a total payment of \$48,000.00
28 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. Beast Sports shall

1 make this payment by wire transfer to ERC's escrow account, for which ERC will give Beast
2 Sports the necessary account information. The Total Settlement Amount shall be apportioned
3 as follows:

4 4.2 \$11,000.00 shall be considered a civil penalty pursuant to California Health and
5 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$8,250.00) of the civil penalty to the
6 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code §25249.12(c). ERC will retain the remaining 25% (\$2,750.00) of the civil penalty.

9 4.3 \$3,912.88 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 4.4 \$2,380.00 shall be distributed to ERC in lieu of further civil penalties, for the
12 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
13 includes work, analyzing, researching and testing consumer products that may contain
14 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
15 the subject matter of the current action; (2) the continued monitoring of past consent judgments
16 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
17 donation of \$120.00 to the Center For Environmental Health to address reducing toxic chemical
18 exposures in California.

19 4.5 \$16,675.00 shall be distributed to Michael Freund as reimbursement of ERC's
20 attorney's fees, \$945.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
21 attorney's fees, while \$13,087.12 shall be distributed to ERC for its in-house legal fees.

22 **5. MODIFICATION OF CONSENT JUDGMENT**

23 5.1 This Consent Judgment may be modified only (i) by written stipulation of the
24 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
25 judgment.

26 5.2 If Beast Sports seeks to modify this Consent Judgment under Section 5.1, then
27 Beast Sports must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
28 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must

1 provide written notice to Beast Sports within thirty days of receiving the Notice of Intent. If
2 ERC notifies Beast Sports in a timely manner of ERC's intent to meet and confer, then the
3 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
4 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
5 confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC
6 shall provide to Beast Sports a written basis for its position. The Parties shall continue to meet
7 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
8 Should it become necessary, the Parties may agree in writing to different deadlines for the
9 meet-and-confer period.

10 5.3 In the event that Beast Sports initiates or otherwise requests a modification under
11 Section 5.1, and the meet and confer process leads to a joint motion or application of the
12 Consent Judgment, Beast Sports shall reimburse ERC its costs and reasonable attorney's fees
13 for the time spent in the meet-and-confer process and filing and arguing the motion or
14 application.

15 5.4 Where the meet-and-confer process does not lead to a joint motion or
16 application in support of a modification of the Consent Judgment, then either Party may seek
17 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
18 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
19 means a party who is successful in obtaining relief more favorable to it than the relief that the
20 other party was amenable to providing during the Parties' good faith attempt to resolve the
21 dispute that is the subject of the modification.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
23 **JUDGMENT**

24 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
25 this Consent Judgment.

26 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
27 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
28 inform Beast Sports in a reasonably prompt manner of its test results, including information

1 sufficient to permit Beast Sports to identify the Covered Products at issue. Beast Sports shall,
2 within thirty days following such notice, provide ERC with testing information, from an
3 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
4 demonstrating Beast Sports' compliance with the Consent Judgment, if warranted. The Parties
5 shall first attempt to resolve the matter prior to ERC taking any further legal action.

6 7. APPLICATION OF CONSENT JUDGMENT

7 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
8 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
9 divisions, affiliates, franchisers, licensees, customers (excluding private labelers), distributors,
10 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
11 application to Covered Products which are distributed or sold exclusively outside the State of
12 California and which are not used by California consumers.

13 8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

14 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on
15 behalf of itself and in the public interest, and Beast Sports and its respective officers, directors,
16 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
17 franchisees, licensees, customers (not including private label customers of Beast Sports),
18 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
19 distribution chain of any Covered Product, and the predecessors, successors and assigns of any
20 of them (collectively, "Released Parties"), fully and finally releasing Beast Sports and the
21 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
22 damages, penalties, fees, costs and expenses asserted, or that could have been asserted from the
23 handling, use, or consumption of the Covered Products, as to any alleged violation of
24 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
25 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

26 8.2 ERC on its own behalf only and Beast Sports on its own behalf only, further
27 waive and release any and all claims they may have against each other and against the Released
28 Parties for all actions or statements of any nature up through and including the Effective Date,

1 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
2 enforce the terms of this Consent Judgment.

3 **8.3** It is possible that other claims not known to the Parties arising out of the facts
4 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
5 discovered. ERC on behalf of itself only, on one hand, and Beast Sports, on the other hand,
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such
7 claims up through the Effective Date, including all rights of action therefore. ERC and Beast
8 Sports acknowledge that the claims released in Sections 8.1 and 8.2 above may include
9 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
10 unknown claims. California Civil Code section 1542 reads as follows:

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

16 ERC on behalf of itself only, on the one hand, and Beast Sports, on the other hand,
17 acknowledge and understand the significance and consequences of this specific waiver of
18 California Civil Code section 1542.

19 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any release regarding alleged exposures to lead
21 in the Covered Products as set forth in the Notice and the Complaint.

22 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
23 environmental exposures arising under Proposition 65, nor shall it apply to any of Beast Sports'
24 products other than the Covered Products.

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

28 **10. GOVERNING LAW**

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

1 **11. PROVISION OF NOTICE**

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

5 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Tel: (619) 500-3090
10 Email: chris_erc501c3@yahoo.com

11 With a copy to:

12 Michael Freund
13 Ryan Hoffman
14 Michael Freund & Associates
15 1919 Addison Street, Suite 105
16 Berkeley, CA 94704
17 Telephone: (510) 540-1992
18 Facsimile: (510) 540-5543

19 **ULTRA-LAB NUTRITION, INC. dba**
20 **BEAST SPORTS NUTRITION**

21 Anthony Alfieri
22 President
23 Ultralab Nutrition, Inc. d/b/a Beast Sports Nutrition
24 3100 NW Boca Raton Blvd. #213
25 Boca Raton, FL 33431

26 With a copy to:

27 Matthew R. Ott
28 Scott R. Hatch
29 Carl & Jensen
30 A Professional Corporation
31 610 Newport Center Drive, Suite 700
32 Newport Beach, CA 92660
33 Telephone: (949) 717-3000
34 Facsimile: (949) 717-3100

1 **12. COURT APPROVAL**

2 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 12.2 If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

1 used in the preceding sentence, the term "prevailing party" means a party who is successful in
2 obtaining relief more favorable to it than the relief that the other party was amenable to providing
3 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
4 action.

5 **16. ENTIRE AGREEMENT, AUTHORIZATION**

6 **16.1** This Consent Judgment contains the sole and entire agreement and
7 understanding of the Parties with respect to the entire subject matter herein, and any and all
8 prior discussions, negotiations, commitments and understandings related hereto. No
9 representations, oral or otherwise, express or implied, other than those contained herein have
10 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
11 herein, shall be deemed to exist or to bind any Party.

12 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
14 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

20 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
21 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
22 been diligently prosecuted, and that the public interest is served by such settlement; and

23 (2) Make the findings pursuant to California Health and Safety Code section
24 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

25 **IT IS SO STIPULATED:**
26
27
28

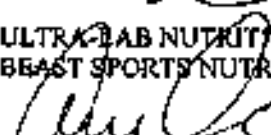
1 Dated: 9/15, 2015

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Hephinstall, Executive Director

4 Dated: 9/15, 2015

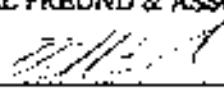
ULTRA-LAB NUTRITION, INC. dba
BEAST SPORTS NUTRITION

By: 
MARIA ALTIERI
Its: VICE PRESIDENT


8 APPROVED AS TO FORM:

9 Dated: 9/17, 2015

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center
CALL & JENSEN

14 Dated: 9/17, 2015

By: 
Matthew R. Orr
Scott R. Hatch
Attorneys for Defendant Ultra-Lab
Nutrition, Inc. dba Beast Sports Nutrition

19 **ORDER AND JUDGMENT**

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

22 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: _____, 2015

Judge of the Superior Court



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

January 31, 2014

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to 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 Violator identified below.

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

Ultra-Lab Nutrition, Inc. dba Beast Sports Nutrition

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:

Beast Sports Nutrition Super Test - Lead
Beast Sports Nutrition Beast Mode Beast Punch Flavor - Lead
Beast Sports Nutrition Amphetamine Orange Cooler Flavor - Lead
Beast Sports Nutrition Beast Mode Pink Lemonade Flavor - Lead

Exhibit A

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.

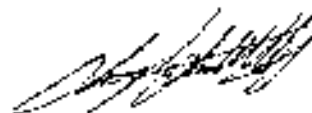
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred 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 31, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Ultra-Lab Nutrition, Inc. dba Beast Sports Nutrition 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 Ultra Lab Nutrition, Inc. dba Beast Sports Nutrition

I, Chris Heptinstall, declare:

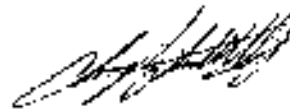
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 31, 2014

Chris Heptinstall

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 31, 2014, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Ultra-Lab Nutrition, Inc. dba Beast Sports Nutrition
7491 N. Federal Hwy
CS-148
Boca Raton, FL 33487

Anthony Altieri
(Registered Agent of Ultra-Lab Nutrition, Inc.
dba Beast Sports Nutrition)
7491 N. Federal Hwy
CS-148
Boca Raton, FL 33487

Current President or CEO
Ultra-Lab Nutrition, Inc. dba Beast Sports Nutrition
3100 NW 2nd Avenue
Suite 213
Boca Raton, FL 33431

On January 31, 2014, I electronically served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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

On January 31, 2014, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on January 31, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 Los Angeles, CA 90012	District Attorney, San Diego County 320 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P O Box 248 Mendocino, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 334 Ventura, CA 93009
District Attorney, Alameda County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 1501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave, Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Greenville, 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 352 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1009 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Cir., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1132 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94551	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 City Hall, Room 201 1 Dr Carlton B Goodlett Pl San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 95317	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 th 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 95902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downsville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 118 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96197	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 440 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10819 Justice Center Drive, Ste 210 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 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3460 Orange Street Riverside, CA 92504	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1408 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 253 N. Forbes Street Lakeport, CA 96453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste B 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 Blvd., Room 224 Visalia, CA 93291	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/Index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.