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16 Attorney for Defendant
17 Bio Nutritional Research Group, Inc.

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
19 CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE

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

23 Plaintiff,

24 vs.

25 BIO NUTRITIONAL RESEARCH)
26 GROUP, INC., and DOES 1-25, Inclusive,)

27 Defendants.)
28

Case No.: BC537514

[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER

[Health & Safety Code § 25249.5, *et seq.*]

1 INTRODUCTION

1.1 On March 5, 2014, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this Action by filing a Complaint for Injunctive Relief and Civil Penalties under the provisions of California’s Safe

1 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section
2 25249.5 *et seq.* (also known as and herein after referred to as “Proposition 65”) against
3 Defendant BIONUTRITIONAL RESEARCH GROUP, INC. (“BNRG”). On or about August 25,
4 2014, ERC filed a First Amended Complaint. ERC alleged violations concerning the following
5 products:

- 6 a. BNRG Proto Whey Vanilla Crème
- 7 b. BNRG Power Crunch Proto Whey Café Mocha
- 8 c. BNRG Power Crunch Protein Energy Bar Original Triple Chocolate
- 9 d. BNRG Power Crunch Proto Whey Double Chocolate
- 10 e. BNRG Power Crunch Proto Whey Cookies & Crème
- 11 f. BNRG Power Crunch Proto Whey Ultraburn Chocolate Crème
- 12 g. BNRG Power Crunch Proto Whey Ultraburn Vanilla Café

13 These listed products are hereinafter collectively the “Covered Products” or “Covered Product”
14 to refer to a single product.

15 **1.2** ERC is a California non-profit corporation acting as a private enforcer of
16 Proposition 65 that is dedicated to, among other causes, helping safeguard the public from health
17 hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe
18 environment for consumers and employees, and encouraging corporate responsibility. ERC
19 brings this Action in the public interest pursuant to California Health and Safety Code Section
20 25249.7, has diligently prosecuted this matter, and is settling in the public interest.

21 **1.3** BNRG is a California Corporation and at all relevant times for purposes of this
22 Consent Judgment, employed ten or more persons, and qualified as a “person in the course of
23 doing business” within the meaning of Proposition 65. BNRG manufactures, distributes and sells
24 the Covered Products.

25 **1.4** ERC and BNRG are hereinafter sometimes referred to individually as a “Party” or
26 collectively as the “Parties.”

27 **1.5** On July 19, 2013, pursuant to California Health and Safety Code Section
28 25249.7(d)(1), ERC served a Notice of Violation of Proposition 65 (“Notice of Violations”) on

1 the California Attorney General, other public enforcers, and BNRG. A true and correct copy of
2 the July 19, 2013 Notice of Violation is attached hereto as Exhibit A.

3 **1.6** On May 23, 2014, pursuant to California Health and Safety Code Section
4 25249.7(d)(1), ERC served a second Notice of Violation of Proposition 65 on the California
5 Attorney General, other public enforcers, and BNRG. A true and correct copy of the May 23,
6 2014 Notice of Violation is attached hereto as Exhibit B.

7 **1.7** The July 19, 2013 Notice of Violation and the May 23, 2014 Notice of Violation
8 are collectively referred to herein as the “Notices of Violations.”

9 **1.8** More than sixty (60) days passed since service of the Notices of Violations, and
10 no designated governmental agency filed a complaint against BNRG with regard to the Covered
11 Products or the alleged violations.

12 **1.9** The Complaint, the First Amended Complaint, and the Notices of Violations
13 allege that BNRG manufactured, distributed, and/or sold in California the Covered Products,
14 which contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive
15 toxin, and expose consumers at a level requiring a Proposition 65 warning. They further allege
16 that use of the Covered Products exposes persons in California to lead without first providing
17 clear and reasonable warnings, in violation of California Health and Safety Code Section
18 25249.6. BNRG denies all material allegations of the Notices of Violation, the Complaint, and
19 the First Amended Complaint, asserts numerous affirmative defenses, and specifically denies
20 that the Covered Products require a Proposition 65 warning or otherwise cause harm to any
21 person.

22 **1.10** The Parties enter into this Consent Judgment in order to settle, compromise and
23 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
24 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
25 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
26 parent companies, subsidiaries, divisions, franchisees, licensees, distributors, wholesalers, or
27 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or
28 liability, including without limitation, any admission concerning any alleged violation of

1 Proposition 65. This Consent Judgment shall not be offered or admitted as evidence in any
2 administrative or judicial proceeding or litigation in any court, agency or forum, except with
3 respect to an action seeking to enforce the terms of this Consent Judgment. Except as expressly
4 set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right,
5 remedy, argument, or defense the Parties may have in any other or future legal proceeding
6 unrelated to these proceedings. However, nothing in this Section shall affect the enforceability of
7 this Consent Judgment, and shall not diminish or otherwise affect the obligations, responsibilities
8 or duties of any Party with respect to this Consent Judgment.

9 **1.11** The “Effective Date” of this Consent Judgment shall be the date this Consent
10 Judgment is entered by the Court.

11 **1.12** The only products covered by this Consent Judgment are the Covered Products,
12 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
13 Covered Products only.

14 **2. JURISDICTION AND VENUE**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties as to
17 the acts alleged in the First Amended Complaint, that venue is proper in Los Angeles Superior
18 Court, and that this Court has jurisdiction to enter this Consent Judgment pursuant to the terms
19 set forth herein.

20 **3. INJUNCTIVE RELIEF**

21 **3.1 Reformulation of Covered Products.** Beginning on the Effective Date, subject
22 to the sell through period outlined in Section 3.5, BNRG shall be permanently enjoined from
23 directly selling to a consumer in California or “Distributing into California” any Covered
24 Product for which the “Daily Lead Exposure Level” exceeds an amount of lead that is 0.5
25 micrograms, excluding the Warner Lambert and cocoa allowances set forth in table 3.3 below.

26 **3.2** “Distributing into California” and “Distribute into California” mean to directly
27 ship any of the Covered Products into California for sale or to sell any of the Covered Products
28 to a distributor that BNRG knows will, or intends to, sell the Covered Product in California.

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3.4 Testing and Quality Control Methodology

(a) Within one year of the Effective Date, BNRG shall arrange for lead testing of the Covered Products by arranging for testing of three randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which BNRG intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into California.” BNRG shall provide copies of these test results to ERC.

(b) For purposes of measuring the “Daily Lead Exposure Level”, the highest lead detection result of the three (3) randomly selected samples of the Covered Products will be controlling.

(c) All testing pursuant to this Consent Judgment shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method that achieves this limit of quantification.

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

(e) Nothing in this Consent Judgment shall limit BNRG’s ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.5 Sell Through Period. Notwithstanding anything else in this Consent Judgment, BNRG’s Covered Products that were manufactured prior to the Effective Date shall be subject to the release of liability pursuant to Section 10 of this Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed or sold to consumers. As a result, the obligations of BNRG as set forth in this Consent Judgment, including but not limited to Section 3, do not apply to these products manufactured prior to the Effective Date. Within no

1 more than ten (10) days of the Effective Date, BNRG will provide ERC with the final lot
2 numbers of Covered Products manufactured before the Effective Date.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
5 penalties, attorney's fees, and costs, BNRG shall make a total payment of \$202,500 ("Total
6 Settlement Amount"), which shall be paid in ten (10) equal monthly installments of \$20,250
7 (the "Settlement Payments"), the first of which shall be due and payable within ten (10)
8 business days after the Effective Date. BNRG shall make each Settlement Payment by wire
9 transfer to ERC's escrow account, for which ERC will give BNRG the necessary account
10 information. Said payment shall be for the following:

11 **4.2** As a portion of the Total Settlement Amount, \$89,668.00 shall be considered a
12 civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit
13 75% (\$67,251.00) of the civil penalty to the Office of Environmental Health Hazard
14 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund
15 in accordance with California Health and Safety Code §25249.12(c). ERC will retain the
16 remaining 25% (\$22,417.00) of the civil penalty.

17 **4.3** \$4,466.98 shall be distributed to Environmental Research Center as
18 reimbursement to ERC for (A) reasonable costs associated in bringing this action; and
19 (B) \$67,646.47 shall be distributed to Environmental Research Center in lieu of further civil
20 penalties, for the day-to-day business activities such as (1) continued enforcement of
21 Proposition 65, which includes work, analyzing, researching and testing consumer products that
22 may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible
23 products that are the subject matter of the current action; (2) the continued monitoring of past
24 consent judgments and settlements to ensure companies are in compliance with Proposition 65;
25 and (3) giving a donation of \$3,381.00 to the Environmental Working Group to address
26 reducing toxic chemical exposures in California.

27 **4.4** \$15,225.00 shall be distributed to Wraith Law as reimbursement of ERC's
28 attorney's fees and \$25,493.55 shall be distributed to ERC for its in-house legal fees.

1 **5. COSTS AND FEES**

2 Except as expressly set forth in Section 4, each Party shall bear its own attorney’s fees,
3 costs, and expenses in this Action.

4 **6. MODIFICATION AND TERMINATION OF CONSENT JUDGMENT**

5 **6.1.** This Consent Judgment may be modified only by: (i) Written agreement and
6 stipulation of the Parties and (ii) upon entry of a modified Consent Judgment by the Court. ERC
7 is entitled to reimbursement all reasonable attorneys’ fees and costs regarding any modification
8 requested or initiated by BNRG.

9 **6.2.** If either party seeks to modify this Consent Judgment under Section 8.1, then the
10 party requesting the modification shall provide written notice to the other party of its intent
11 (“Notice of Intent”). If the party receiving the Notice of Intent seeks to meet and confer
12 regarding the proposed modification, then that party shall provide written notice to the other
13 party within thirty (30) days of receiving the Notice of Intent. If such notice is provided in a
14 timely manner, then the parties shall meet and confer in good faith as required in this Section.
15 The parties shall meet in person or on the telephone within thirty (30) days of notification of
16 intent to meet and confer. Within thirty (30) days of such meeting, if the party receiving the
17 Notice of Intent disputes the proposed modification, that party shall provide the other party a
18 written factual basis for its position. The parties shall continue to meet and confer for an
19 additional thirty (30) days in an effort to resolve any remaining disputes. The parties may agree
20 in writing to different deadlines for the meet and confer period.

21 **6.3.** Where the meet and confer process does not lead to a joint motion or application
22 in support of a modification of the Consent Judgment, then either party may seek judicial relief
23 on its own. In such a situation, the prevailing party may seek to recover costs and reasonable
24 attorney’s fees. As used in the preceding sentence, the term “prevailing party” means a party
25 who is successful in obtaining relief more favorable to it than the relief that the other party was
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1 amenable to providing in writing and with specificity during the parties' good faith attempt to
2 resolve the dispute that is the subject of the modification.

3 **6.4.** In the event that Proposition 65 is repealed, preempted, or otherwise rendered
4 inapplicable by reason of law generally, then this Consent Judgment shall terminate
5 automatically without the need for further action of the parties. Should there be an amendment to
6 Proposition 65 or should OEHHA promulgate regulations that establish a Maximum Allowable
7 Dose Level ("MADL") of lead that is more or less stringent than 0.5 micrograms per day, this
8 Consent Judgment shall be deemed modified on the date the amendment becomes final to
9 incorporate the new standard, provided however, such time period shall be extended to include
10 the completion through final appeal of timely filed legal challenges. The new MADL shall
11 thereafter replace the references in this Consent Judgment to 0.5 micrograms.

12 **6.5.** This Consent Judgment shall terminate without further action by any party when
13 BNRG no longer manufactures, distributes or sells all of the Covered Products and all of such
14 Covered Products previously "distributed for sale in California" have reached their expiration
15 dates and are no longer sold.

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18 **7. RETENTION OF JURISDICTION**

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

21 **8. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
22 **RESOLVE DISPUTES**

23 **8.1** In the event a dispute arises with respect to any Party's compliance with the terms
24 and/or conditions of this Consent Judgment after its entry by the Court, the Party seeking
25 compliance of another Party shall make a good faith attempt to resolve the dispute by conferring
26 with the other Party in person, by telephone or by written communication before seeking relief
27 from the Court. If the dispute is not resolved after such an attempt, this Consent Judgment may
28 be enforced in this Court pursuant to Code of Civil Procedure § 664.4 or any other valid

1 provision of the law. The prevailing party in any such dispute brought to this Court for resolution
2 shall be awarded all reasonable costs and attorney's fees. As used in the preceding sentence, the
3 term "prevailing party" means a party who is successful in obtaining relief more favorable to it
4 than the relief the other party was agreeable to providing during the Parties' good faith attempt to
5 resolve the dispute that is the subject of such an enforcement proceeding.

6 **9. APPLICATION OF CONSENT JUDGMENT**

7 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
8 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
9 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
10 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have
11 no application to Covered Products that are exclusively distributed and/or sold outside the State
12 of California. With respect to Covered Products that are distributed and/or sold both inside and
13 outside of California, the requirements contained in this Consent Judgment apply to the Covered
14 Products only to the extent that the distribution and/or sales occur in California.

15 **10. RELEASE**

16 **10.1** ERC acting on its own behalf and in the public interest releases BNRG and its
17 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
18 affiliates, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
19 retailers, predecessors, successors, and assigns from any and all claims for any violations of
20 Proposition 65 up through the Effective Date relating to exposure to lead from the Covered
21 Products as set forth in the Notice of Violation. Compliance with the terms of this Consent
22 Judgment shall constitute compliance with Proposition 65 with regard to any exposures to lead
23 from the Covered Products as set forth in the Notice of Violation and Complaint.

24 **10.2 Unknown Claims**

25 It is possible that other claims not now known to the Parties arising out of the facts
26 alleged in the Notice of Violation or the Complaint and relating to lead in the Covered Products
27 that were manufactured before the Effective Date will develop or be discovered. ERC, on behalf
28 of itself only, waives California Civil Code Section 1542 as to any such unknown claims.

1 California Civil Code Section 1542 reads as follows:

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

7 **10.3** ERC on behalf of itself only, on one hand, and BNRG, on the other hand, each
8 release and waive all claims they may have against each other and their respective officers,
9 directors, employees, agents, representatives, and attorneys for any statements or actions made or
10 undertaken by them or their respective officers, directors, employees, agents, representatives, and
11 attorneys in connection with the Notice of Violation or this Action.

12 **10.4** Nothing in this release is intended to apply to any occupational or environmental
13 exposures arising under Proposition 65, nor shall it apply to any products other than the Covered
14 Products.

15 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **12. GOVERNING LAW**

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

22 **13. COURT APPROVAL**

23 **13.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
24 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
25 Consent Judgment.

26 **13.2** If the California Attorney General objects to any term in this Consent Judgment,
27 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
28 prior to the hearing on the motion.

1 **13.3** If this Stipulated Consent Judgment is not approved by the Court despite the
2 Parties' best efforts, it shall be null and void and have no force or effect.

3 **14. DRAFTING**

4 The terms of this Consent Judgment have been reviewed by the respective legal counsel
5 for each Party prior to its signing, and each Party has had an opportunity to fully discuss the
6 terms with its legal counsel. The Parties agree that, in any subsequent interpretation or
7 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
8 and no provision of this Consent Judgment shall be construed against any Party, based on the
9 fact that one of the Parties drafted any portion of this Consent Judgment.

10 **15. ENTIRE AGREEMENT**

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

17 **16. EXECUTION IN COUNTERPARTS**

18 This Stipulated Consent Judgment may be executed in counterparts, which taken together
19 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as
20 the original signature.

21 **17. NOTICES**

22 All notices required to be given to either Party to this Consent Judgment by the other
23 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)
24 certified mail, (b) overnight courier, or (c) personal delivery to the following

25 **For Environmental Research Center**
26 Chris Heptinstall, Executive Director
27 Environmental Research Center
28 3111 Camino del Rio North, Suite 400
San Diego, CA 92108
Phone: 619-500-3090
Email: chris_erc501c3@yahoo.com

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William F. Wraith, Esq.
Wraith Law
16485 Laguna Canyon Road, Suite 250
Irvine, CA 92618

For Bio Nutritional Research Group, Inc.


Daniel Chammas
Venable LLP
2049 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 229-0302
Facsimile: (310) 229-9901

18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT

Each person signing this Consent Judgment on behalf of a Party certifies that he or she is fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party, and to legally bind that Party to this Consent Judgment. The terms and conditions of this Consent Judgment have been reviewed by the respective counsel for the Parties prior to its signing, and each person signing this Consent Judgment has had an opportunity to fully discuss the terms and conditions with that Party's counsel. Each person signing this Consent Judgment on behalf of a Party represents and warrants that he or she has read and understands this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on behalf of that Party.

IT IS SO STIPULATED:


ENVIRONMENTAL RESEARCH CENTER



Chris Heptinstall, Executive Director

Dated: 4/7/15

BIO NUTRITIONAL RESEARCH GROUP, INC.



By: Kevin Lawrence
Its: Chief Executive Officer

Dated: 4/8/15

1 APPROVED AS TO FORM:

2

3 WRAITH LAW

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Dated: 4/8/2015

5 _____
6 William F. Wraith
7 Counsel for Environmental Research Center

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8 VENABLE LLP

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Dated: 4/9/15

11 _____
12 Daniel B. Chammas
13 Counsel for Bio Nutritional Research Group, Inc.

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

Judge, Superior Court of the State of California

EXHIBIT “A”

WRAITH LAW

16485 LAGUNA CANYON ROAD
SUITE 250
IRVINE, CALIFORNIA 92618
Tel (949) 251-9977
Fax (949) 251-9978

July 19, 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, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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 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 that violated Proposition 65 (hereinafter the “Violator”) is:

Bio-Nutritional Research Group, Inc.

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- BNRG Proto Whey Vanilla Crème – Lead
- BNRG Power Crunch Proto Whey Café Mocha

July 19, 2013

Page 2

- BNRG Power Crunch Protein Energy Bar Original Triple Chocolate
- BNRG Power Crunch Proto Whey Double Chocolate
- BNRG Power Crunch Proto Whey Cookies & Crème

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 July 19, 2010, 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.

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,



William F. Wraith

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

July 19, 2013

Page 3

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Bio-Nutritional Research Group, Inc. 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
Bio-Nutritional Research Group, Inc.**

I, William F. Wraith, 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.

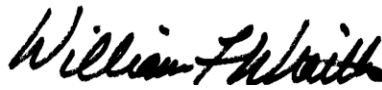
2. I am an attorney for the noticing party.

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: July 19, 2013



William F. Wraith

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 July 19, 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 party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

President or CEO
Bio-Nutritional Research Group, Inc.
15375 Barranca Pkwy, Suite C-104
Irvine, CA 92618

Alan G. Novodor
(Registered Agent for Bio-Nutritional Research Group)
11835 W. Olympic Boulevard, Suite 1125E
Los Angeles, CA 90064

On July 19, 2013, 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
Oakland, CA 94612-0550

On July 19, 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 Priority Mail.

Executed on July 19, 2013, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

July 19, 2013

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, 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 Markleeville, 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 314 Ventura, CA 93009
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District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
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District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 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 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
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District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 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 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 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. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

EXHIBIT “B”

WRAITH LAW

16485 LAGUNA CANYON ROAD
SUITE 250
IRVINE, CALIFORNIA 92618
Tel (949) 251-9977
Fax (949) 251-9978

May 23, 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 represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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 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 that violated Proposition 65 (hereinafter the “Violator”) is:

Bio-Nutritional Research Group, Inc.

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**BNRG PowerCrunch Proto Whey Ultraburn Chocolate Crème - Lead
BNRG PowerCrunch Proto Whey Ultraburn Vanilla Café - Lead**

May 23, 2014

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 23, 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.

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,



William F. Wraith

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Bio-Nutritional Research Group, Inc. 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 Bio-Nutritional Research Group, Inc.

I, William F. Wraith, 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.

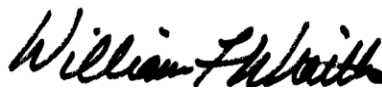
2. I am an attorney for the noticing party.

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: May 23, 2014



William F. Wraith

CERTIFICATE OF SERVICE

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

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

On May 23, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO Bio-Nutritional Research Group, Inc. 15375 Barranca Parkway, Suite C-104 Irvine, CA 92618	Alan G. Novodor (Bio-Nutritional Research Group, Inc.’s Registered Agent for Service of Process) 11835 West Olympic Boulevard Suite 1125 E Los Angeles, CA 90064
Current President or CEO Bio-Nutritional Research Group, Inc. 10314 Birtcher Drive Mira Loma, CA 91752	

On May 23, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, 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
Oakland, CA 94612-0550

On May 23, 2014, I served the following documents: **NOTICE OF VIOLATIONS, 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 Priority Mail.

Executed on May 23, 2014, in Fort Oglethorpe, Georgia.



Tiffany Caphart

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

May 23, 2014

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