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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16

17 ENVIRONMENTAL RESEARCH)
18 CENTER, INC.,)
19 Plaintiff,)
20 v.)
21 FUTUREBIOTICS, LLC; and DOES 1-)
22 50, inclusive,)
23 Defendants.)
24

CASE NO. CGC-14-543098
STIPULATED CONSENT JUDGMENT
Health & Safety Code § 25249.5 *et seq.*
Action Filed: December 8, 2014
Trial Date: March 7, 2016

25 **1. INTRODUCTION**

26 1.1 This Action arises out of the alleged violations of California's Safe Drinking
27 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5
28 *et seq.* (also known as and herein after referred to as "Proposition 65") regarding the following

1 products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a
2 single product):

- 3 1) Futurebiotics Colon Green
- 4 2) Futurebiotics Living Energy
- 5 3) Futurebiotics Vital K
- 6 4) Futurebiotics 100% Pure Shark Cartilage
- 7 5) Futurebiotics Nutrition for Men Male Power
- 8 6) Futurebiotics Cholesta-Lo
- 9 7) Futurebiotics Prostadvance

10
11 1.2 Plaintiff Environmental Research Center, Inc. ("ERC") is a California non-profit
12 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
13 causes, helping safeguard the public from health hazards by reducing the use and misuse of
14 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
15 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
16 to California Health and Safety Code Section 25249.7.

17 1.3 Defendant FUTUREBIOTICS, LLC is a New York Limited Liability Company
18 (referred to hereinafter as "FUTUREBIOTICS"). FUTUREBIOTICS manufactures, distributes
19 and sells the Covered Products.

20 1.4 ERC and FUTUREBIOTICS are hereinafter sometimes referred to individually as
21 a "Party" or collectively as the "Parties."

22 1.5 On December 10, 2012 and August 29, 2014, pursuant to California Health and
23 Safety Code Section 25249.7(d)(1), ERC served Notices of Violations of Proposition 65
24 ("Notices of Violations") on the California Attorney General, other public enforcers, and
25 FUTUREBIOTICS. True and correct copies of the Notices of Violations are attached hereto as
26 **Exhibit A.**

27 1.6 After more than sixty (60) days passed since service of the December 10, 2012
28 Notices of Violation, and no designated governmental agency filed a complaint against

1 FUTUREBIOTICS with regard to the Covered Products or the alleged violations, ERC filed the
2 Complaint in this Action (the "Complaint") for injunctive relief and civil penalties. The
3 Complaint was based, in part, on the allegations in the December 10, 2012 Notice of Violation.
4 Subsequently, on May 21, 2015, an Amended Complaint (the "Amended Complaint") was filed
5 to include allegations regarding the August 29, 2014 Notice of Violation.

6 1.7 The Amended Complaint and the Notices of Violations each allege that
7 FUTUREBIOTICS manufactured, distributed, and/or sold in California the Covered Products,
8 which contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive
9 toxin, and expose consumers at a level requiring a Proposition 65 warning. They further allege
10 that use of the Covered Products exposes persons in California to lead without first providing
11 clear and reasonable warnings, in violation of California Health and Safety Code Section
12 25249.6. FUTUREBIOTICS denies all material allegations of the Notices of Violations and the
13 Amended Complaint, asserts numerous affirmative defenses, and specifically denies that the
14 Covered Products require a Proposition 65 warning or otherwise cause harm to any person.

15 1.8 The Parties enter into this Consent Judgment in order to settle, compromise and
16 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
17 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
18 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
19 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
20 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
21 wrongdoing, or liability, including without limitation, any admission concerning any alleged
22 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent
23 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
24 may have in any other or future legal proceeding unrelated to these proceedings. However,
25 nothing in this Section shall affect the enforceability of this Consent Judgment.

26 1.9. The "Effective Date" of this Consent Judgment shall be the date this Consent
27 Judgment is entered by the Court.

28 **2. JURISDICTION AND VENUE**

1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
2 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
3 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
4 pursuant to the terms set forth herein.

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

6 **3.1 Clear and Reasonable Warnings**

7 On and after the Effective Date of this Consent Judgment, FUTUREBIOTICS shall be
8 permanently enjoined from Distributing into California, manufacturing for sale in California,
9 and/or directly selling to a consumer in the State of California any Covered Product for which
10 the maximum dose recommended on the label contains more than 0.5 micrograms (mcg) of lead,
11 as calculated in accordance with the formula set forth in Section 3.6 and pursuant to the testing
12 done in accordance with Section 3.8, unless FUTUREBIOTICS complies with at least one of the
13 required warning methods set forth in Section 3.1 through Section 3.5. The term "Distributing
14 into California" means to ship any of the Covered Products into California for sale in California,
15 or to sell or provide any of the Covered Products to any person or entity that FUTUREBIOTICS
16 knows will sell or intends to sell any of the Covered Products in California.

17 In all warning methods contained in Section 3.2 through Section 3.5 below, the Warning
18 shall be provided with such conspicuousness, as compared with other words, statements, designs,
19 or devices on the container, labeling, webpage, catalog page, invoice, insert, or in the store as to
20 render it likely to be read and understood by an ordinary individual under customary conditions
21 of purchase or use. In all warning methods, no other statements may accompany the Warning,
22 except that FUTUREBIOTICS may refer consumers to a single website for further information
23 and may indicate by reference to an identifier, such as "P65," to which products the Warning
24 applies. The Warning shall be at least the same size as the largest of any other health or safety
25 warnings on the container, labeling, webpage, catalog page, invoice, or insert, as applicable, and
26 the word "WARNING" shall be in all capital letters and in bold print. The Warning shall be
27 contained in the same section of the container, labeling, webpage, catalog page, invoice, or
28 insert, as applicable, which states other safety warnings concerning the use of the Covered

1 Product.

2 **3.2 The Warning Language.**

3 The warning language shall be one of the following:

4 **[California Proposition 65] WARNING [(California Proposition 65)]** This
5 product contains [lead,] [a] chemical[s] known [to the State of California] to
6 cause [cancer and] birth defects or other reproductive harm.

7 **[California Proposition 65] WARNING [(California Proposition 65)]** This
8 product contains [lead,] [a] substance[s] known [to the State of California] to
9 cause [cancer and] birth defects or other reproductive harm.

10 The text in brackets in the warnings above is optional. The words "cancer and" shall be included
11 in the warning only if the maximum recommended dose stated on the Covered Product's label
12 contains more than 15 micrograms (mcg) of lead as calculated in accordance with the formula set
13 forth in Section 3.6 below.

14 **3.3 Warning Method (Store Warning)**

15 For sales in retail stores, the Warning shall be provided by either of the following
16 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and
17 Reasonable Warnings in Retail Stores, below:

18 (1) *Identifying Signs and Designated Symbol in Retail Stores.* In retail stores, the
19 Warning may be provided through the use of a system that combines both a designated symbol
20 and an identifying sign that explains the meaning of the designated symbol or a sign. The
21 designated symbol ("Symbol") shall be the Symbol shown on Exhibit B and shall appear as
22 shown on Exhibit B, with black "Prop 65" and "!" text, black border, and yellow background,
23 wherever it is displayed.

24 (A) *Covered Products Displayed in Retail Stores: Signs.*

25 (i) *Form of Sign.* A Sign shall be rectangular and at least 5 inches x 7
26 inches in size, with the word "WARNING" centered one-half of an inch from the top of the sign
27 all in one-half inch capital letters. The Sign shall be substantially identical to the sign attached
28 hereto as Exhibit E. For the body of the warning message, left and right margins of at least one-

1 half of an inch, and a bottom margin of at least one-half inch shall be observed. The Symbol
2 must be at least one inch high. Larger Signs shall bear substantially the same proportions of type
3 size and spacing to sign dimension as a sign that is 5 inches x 7 inches. Unless modified by
4 agreement of the Parties, the Sign shall contain one of the following text (text in brackets is
5 optional, except as described in Section 3.2):

6 WARNING:
7 [CALIFORNIA PROPOSITION 65]

8 Products with the symbol
9 *[Shown on Exhibit B]*
10 contain [lead,] [a] chemical[s] known to the State of California to
11 cause [cancer and] birth defects
12 or other reproductive harm.

13 WARNING:
14 [CALIFORNIA PROPOSITION 65]

15 Products with the symbol
16 *[Shown on Exhibit B]*
17 contain [lead,] [a] substance [s] known to the State of California to
18 cause [cancer and] birth defects
19 or other reproductive harm.

20 (ii) Placement of Sign. Signs shall be placed in each California
21 establishment in which any of FUTUREBIOTICS' Covered Products that requires a warning are
22 sold. Signs shall not be covered or obscured, and shall be placed and displayed in a manner
23 rendering them likely to be read and understood by an ordinary individual prior to purchase. At
24 least one Sign shall be posted in each aisle or on each shelf or display where the Covered
25 Products for which the warning is being provided are offered or displayed for sale, unless the
26 retail establishment has less than 7,500 square feet of retail space, in which case the Sign may be
27 posted at each cash register. Additional signs shall be posted as are necessary to assure that any
28 potential purchaser of Covered Products would be reasonably likely to see a Sign prior to
purchase.

(iii) FUTUREBIOTICS shall provide an exemplar Sign to the central
purchasing office for all distributors and retail establishments with whom FUTUREBIOTICS
transacts business for sale of the Covered Products in California that require a warning.

1 FUTUREBIOTICS shall provide Signs and instructions by letter ("Warning Instruction Letter,"
2 Exhibit C) to the central purchasing office of each distributor or retailer with whom
3 FUTUREBIOTICS transacts business and that offers any of the Covered Products for sale in
4 California retail stores, requiring such retailers to post the Signs as described in Section
5 3.3(1)(A)(ii) above. The Warning Instruction Letter shall request such retailers to respond with a
6 written acknowledgement that the Signs will be posted within 30 days of receipt of the Warning
7 Instruction Letter. FUTUREBIOTICS shall send a follow-up communication ("Follow-Up
8 Warning Instruction Letter," Exhibit D) to entities who were sent the original instructions and
9 who did not return a timely acknowledgment. The Signs, Warning Instruction Letters, and
10 Follow-Up Warning Instruction Letters shall be delivered in person or via a shipping method that
11 is traceable to ensure retailers received the information. FUTUREBIOTICS shall maintain files
12 demonstrating compliance with this provision, including the communications sent and receipts of
13 any acknowledgments from retailers and distributors, which FUTUREBIOTICS shall provide to
14 ERC upon written request. If FUTUREBIOTICS learns that any retailer offering any of the
15 Covered Products for sale in any California retail store does not return an acknowledgement to
16 the Warning Instruction Letter and Follow-Up Warning Instruction Letter within 30 days of
17 receiving the Follow-Up Warning Instruction Letter, or a retailer or distributor is failing to post
18 or maintain the Sign in accordance with subsection (ii) above, then FUTUREBIOTICS shall
19 within 5 business days stop providing Covered Products to such retailer, distributor, or other
20 person until it verifies that compliance with the terms of subsection (ii) above is achieved.

21 (iv) If FUTUREBIOTICS complies with the terms of subsection (iii)
22 above it shall not be found to have violated this Consent Judgment where a retail store or
23 distributor fails to post or maintain the Sign in accordance with this Consent Judgment.

24 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol shall be
25 prominently displayed with such conspicuousness, as compared with other words, statements,
26 designs, or devices used at the point the Covered Product is offered for sale, as to render the
27 Symbol likely to be seen by an ordinary individual prior to purchase. The Symbol shall be
28 permanently affixed to or printed on (at the point of manufacture, prior to shipment to California,

1 or prior to distribution within California) the outside packaging or container of each unit of the
2 Covered Product, in which case the Symbol must be at least as tall as the largest letter in any
3 other health or safety warning on that product label. In no case shall the text "Prop 65" and "!"
4 be less than one-quarter inch (0.25 inch) high.

5 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not using the
6 Identifying Signs and Designated Symbol in Retail Stores system described above in Section
7 3.3(1), the Warning set forth in Section 3.2 may be provided by signs placed and displayed in a
8 manner rendering them likely to be read and understood by an ordinary individual prior to
9 purchase. Signs containing the warning set forth in Section 3.2 shall be posted in each aisle or on
10 each shelf or display where the Covered Products for which the warning is being provided are
11 offered or displayed for sale, unless the retail establishment has less than 7,500 square feet of
12 retail space, in which case the Sign may be posted at each cash register and shall not be
13 obscured. Any sign pursuant to this subsection shall be substantially identical to the sign attached
14 as Exhibit F (but names of Covered Products may change so as to list only those Covered
15 Products which require a warning). The sign must be rectangular and at least 5 inches x 7 inches,
16 with the word "WARNING" in bold and entered one-half of an inch from the top of the sign all
17 in one-half inch capital letters. For the body of the warning message, left and right margins of at
18 least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. Larger
19 signs shall bear substantially the same proportions of type size and spacing to sign dimension as
20 a sign that is 5 inches x 7 inches in size. Each sign shall name each Covered Product that requires
21 the Warning pursuant to Section 3.1. If FUTUREBIOTICS warns under this Section
22 3.3(1)(B)(2), for any retail store not operated by FUTUREBIOTICS, then FUTUREBIOTICS
23 shall provide the sign to the retail store, send the Warning Instruction Letter, and comply with all
24 other requirements under Section 3.3(1)(A)(iii) above.

25 **3.4 Warning Method No. 3 (Website Warning)**

26 The Warning stated in Section 3.2 shall be given in conjunction with all sales of the
27 Covered Products via the Internet, and such Warning shall appear in one of the following ways:

28 (a) on the same web page on which the Covered Product is displayed; (b) on the same web page

1 as the order form for the Covered Product; (c) on the same page as the price for any Covered
2 Product; (d) on one or more web pages displayed to a purchaser during the checkout process; (e)
3 an "Insert Warning" as defined below; or (f) an "Invoice Warning" as defined below. The
4 Warning stated in Section 3.2 shall be used and shall appear in any of the above instances
5 adjacent to or immediately following the display, description, or price of the Covered Product for
6 which it is given, in the same type size or larger than the text of the Covered Product's
7 description.

8 Insert Warning: Where the Covered Product is being shipped to a consumer in California
9 and may be returned by the consumer for a full refund with no extra charge or shipping or
10 handling fee, the warning stated in Section 3.2 may be displayed on the invoice or other package
11 insert that accompanies each box of Covered Products going to a consumer in California. The
12 insert warning shall be a minimum of 5 inches x 7 inches, shall name each Covered Product in
13 the shipment that requires a Warning, and shall be substantially identical to the insert warning
14 attached as Exhibit F (but the names of Covered Products may change so as to list only those
15 Covered Products which require a Warning). The Insert Warning shall state the name(s) of the
16 products subject to the Warning, or a list of all of the Covered Products, unless all products in the
17 shipment require the Warning. No other statements about Proposition 65 or lead may accompany
18 the Warning on the invoice or other package insert, except that FUTUREBIOTICS may refer
19 consumers to a single website for further information. Any Warning printed on an insert or
20 invoice must be in a type size at least as tall as the largest letter in the name of the Covered
21 Product printed on the invoice.

22 Invoice Warning: Where the Covered Product may be returned by the consumer for a full
23 refund with no extra charge or shipping or handling fee, the Warning may be displayed on an
24 invoice that accompanies the shipment of the Covered Product. The Warning shall be displayed
25 with such conspicuousness, as compared with other words, statements, designs, or devices on the
26 invoice, as to render it likely to be read and understood by an ordinary individual prior to use.
27 The word "WARNING" shall be in all capital letters and in bold print. No other statements about
28 Proposition 65 or lead may accompany the warning, except that FUTUREBIOTICS may refer

1 consumers to a single website for further information and/or FUTUREBIOTICS may indicate by
2 reference to an identifier, such as "P65," to which products the Warning applies.

3 A Warning printed on an invoice must be in a type size that is 1) at least as tall as the largest
4 letter or numeral in the name of the Covered Product printed on the invoice, or 2) at least as tall
5 as the largest of any other health or safety warnings on the invoice, whichever is larger. The
6 Invoice Warning shall be substantially identical to the invoice warning attached as Exhibit G.

7 **3.5 Warning Method No. 4 (Printed Catalog)**

8 For Covered Products sold to California consumers through a printed catalog, the
9 Warning shall be prominently displayed on each catalog page that contains a description of the
10 ingredients or attributes of the Covered Product. Where the Covered Product may be returned by
11 the consumer for a full refund with no extra charge or shipping or handling fee, the Warning may
12 alternatively be displayed on the invoice or other package insert as pursuant to Section 3.4 and as
13 attached in Exhibit F and Exhibit G (but names of Covered Products may change so as to list
14 only those Covered Products which require a Warning).

15 **3.6 Calculation of Lead Levels**

16 As used in this Consent Judgment, lead levels are calculated pursuant to the testing
17 protocol described in Section 3.8. For purposes of this Consent Judgment, daily lead exposure
18 levels shall be measured in micrograms, and shall be calculated using the following formula:
19 Micrograms of lead per gram of product, multiplied by grams per serving of the product (using
20 the largest serving size appearing on the Covered Product's label), multiplied by servings of the
21 product per day (using the largest number of servings in the recommended dosage appearing on
22 the Covered Product's label), which equals micrograms of lead exposure per day.

23 **3.7 Reformulated Covered Products**

24 A Reformulated Covered Product is one for which the maximum recommended daily
25 serving on the label contains no more than 0.5 micrograms of lead per day.

26 **3.8 Testing and Quality Control Methodology**

27 (a) FUTUREBIOTICS shall conduct testing of the Covered Products for a minimum
28 of four (4) consecutive years.

1 (b) All testing for lead required by this Consent Judgment shall be performed using
2 Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") or any other testing method
3 subsequently agreed to in writing by the Parties. The testing requirement of this Consent
4 Judgment does not apply to any of the Covered Products for which FUTUREBIOTICS has
5 provided the warning specified in Section 3.2.

6 (c) After the Effective Date, on at least one occasion prior to December 31, 2016,
7 FUTUREBIOTICS shall test three (3) randomly selected samples of each of the Covered
8 Products (in the form intended for sale to the end-user) for lead content. The highest lead
9 detection result of the randomly selected samples from each lot of the Covered Products tested
10 pursuant this subsection will be controlling for each lot of the Covered Product tested. The
11 testing called for by this subsection (c) shall be performed by an independent third-party
12 laboratory certified by the California Environmental Laboratory Accreditation Program, or a
13 laboratory that is registered with the United States Food & Drug Administration.

14 (d) After completing the testing required by subsection 3.8(c), FUTUREBIOTICS
15 may elect to perform the testing for the remaining time period, set forth in subsection 3.8(a), by
16 testing one of the randomly selected samples of each manufactured lot of the Covered Products
17 (in the form intended for sale to the end-user) for lead content in an in-house laboratory that uses
18 testing equipment that is properly maintained and calibrated. The lead detection result of the
19 randomly selected samples from each lot of the Covered Products tested pursuant this subsection
20 will be controlling for each lot of the Covered Product tested.

21 (e) FUTUREBIOTICS shall retain all test results and documentation for a period of
22 four (4) years from the date of each test. FUTUREBIOTICS shall arrange for the laboratory
23 conducting the testing specified in Section 3.8(c) to send the test results to ERC within 10 days
24 of conducting each test. For testing conducted pursuant to subsection 3.8(d), FUTUREBIOTICS
25 shall send such test results to ERC on or before the yearly anniversary of the Effective Date for a
26 period of four (4) years after the Effective Date.

27 (f) The randomly selected samples of each Covered Product tested pursuant to
28 Section 3.8 shall be from those Covered Products which FUTUREBIOTICS intends to sell or is

1 manufacturing for sale in California, directly selling to a consumer in California, or Distributing
2 into California. If tests conducted pursuant to Section 3.8 demonstrate that no warning is
3 required for a Covered Product during each of four (4) consecutive years, then the testing
4 requirements of this Section 3.8 will no longer be required as to that Covered Product. However,
5 if during or after the four (4) year period, FUTUREBIOTICS changes ingredient suppliers for
6 any of the Covered Products and/or reformulates any of the Covered Products,
7 FUTUREBIOTICS shall test that Covered Product as required by Section 3.8(d) for at least four
8 (4) consecutive years after such change is made.

9 (g) Nothing in this Consent Judgment shall limit FUTUREBIOTICS' ability to
10 conduct, or require that others conduct, additional testing of the Covered Products, including the
11 raw materials used in their manufacture.

12 (h) All testing pursuant to Section 3.8 that FUTUREBIOTICS releases to ERC shall
13 be maintained confidentially by ERC and shall not be published, disseminated, or publically
14 released by ERC, except as required by law.

15 4. SETTLEMENT PAYMENT

16 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
17 penalties, attorney's fees, and costs, FUTUREBIOTICS shall make total payments of \$92,500.00
18 ("Total Settlement Amount"). The Total Settlement Amount shall be split into and paid in eight
19 equal installments, the first of which is due within 10 days of the Effective Date and the
20 remaining installments due every 30 days thereafter. FUTUREBIOTICS shall make this payment
21 by wire transfer to ERC's escrow account, for which ERC will give FUTUREBIOTICS the
22 necessary account information. The Total Settlement Amount shall be apportioned as follows:

23 4.2 \$28,320.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$21,240.00) of the civil penalty to the
25 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
27 Code §25249.12(c). ERC will retain the remaining 25% (\$7,080.00) of the civil penalty.

28

1 4.3 \$4,407.88 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 4.4 \$21,365.64 shall be distributed to ERC in lieu of further civil penalties, for the
4 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
5 includes work, analyzing, researching and testing consumer products that may contain
6 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the
7 subject matter of the current action; (2) the continued monitoring of past consent judgments and
8 settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
9 donation of \$1,068.00 to the Center For Environmental Health to address reducing toxic
10 chemical exposures in California.

11 4.5 \$21,225.00 shall be distributed to Philip T. Emmons as reimbursement of ERC's
12 attorney's fees, while \$17,181.48 shall be distributed to ERC for its in-house legal fees.

13 4.6 FUTUREBIOTICS' failure to remit payment before its due date shall be deemed
14 a material breach of this Agreement.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 This Consent Judgment may be modified only by: (i) Written agreement and stipulation
17 of the Parties and (ii) upon entry of a modified Consent Judgment by the Court. ERC is entitled
18 to reimbursement of all reasonable attorneys' fees and costs regarding any modification
19 requested or initiated by FUTUREBIOTICS.

20 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

21 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
22 this Consent Judgment.

23 6.2 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
2 resolution shall be awarded all reasonable costs and attorney's fees. As used in the preceding
3 sentence, the term "prevailing party" means a party who is successful in obtaining relief more
4 favorable to it than the relief the other party was agreeable to providing during the Parties' good
5 faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

6 **7. 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.

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

12 8.1 ERC on behalf of itself, its agents, officers, representatives, successors, and
13 assigns, and in the public interest releases (a) FUTUREBIOTICS and its past and present parent
14 companies, subsidiaries, affiliates, and divisions; (b) each of their respective licensors, licensees,
15 franchisors, franchisees, joint venturers, partners, vendors, manufacturers, packagers,
16 contractors, and finished product and ingredient suppliers; (c) each of their respective
17 distributors, wholesalers, retailers, users, packagers and all other entities in the distribution chain
18 of the Covered Products and 1) Futurebiotics Circu A.V.; 2) Futurebiotics Pressur-Lo; and 3)
19 Futurebiotics Nutrition for Men Hair, Skin & Nails, which are already covered by the consent
20 judgment entered in *People v. 21st Century Healthcare, Inc., et al.*, Case No. RG08426937
21 (Alameda County Superior Court, July 21, 2012); and (d) each of the respective officers,
22 directors, shareholders, employees, and agents of the persons and entities described in (a)
23 through (c) above (the persons and entities identified in (a), (b), (c), and (d), above, including the
24 predecessors and assigns of any of them, are collectively referred to as "the Released Parties")
25 from all claims for violations of Proposition 65 up through the Effective Date based on exposure
26 to lead from the Covered Products as set forth in the Notices of Violations and the Amended
27 Complaint. The Released Parties does not include private label customers of FUTUREBIOTICS.

28 8.2 ERC, on behalf of itself only, and FUTUREBIOTICS, on behalf of itself only,

1 hereby release and discharge from all known and unknown claims for alleged violations of
2 Proposition 65 arising from or relating to alleged exposures to lead or lead compounds in the
3 Covered Products as set forth in the Notices of Violations and the Amended Complaint. It is
4 possible that other claims not known to the Parties arising out of the facts alleged in the Notices
5 of Violations or the Amended Complaint and relating to lead in the Covered Products that were
6 manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself
7 only, and FUTUREBIOTICS, on behalf of itself only, waive California Civil Code Section 1542,
8 which reads as follows:

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

14 ERC, on behalf of itself only, and FUTUREBIOTICS, on behalf of itself only, acknowledge and
15 understand the significance and consequences of this specific waiver of California Civil Code
16 section 1542.

17 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
18 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to
19 lead and lead compounds in the Covered Products as set forth in the Notices of Violations and
20 the Amended Complaint.

21 **8.4** ERC, on one hand, and FUTUREBIOTICS, on the other hand, each release and
22 waive all claims they may have against each other and their respective officers, directors,
23 employees, agents, representatives, and attorneys for any statements or actions made or
24 undertaken by them or their respective officers, directors, employees, agents, representatives, and
25 attorneys in connection with the Notices of Violations or this Action.

26 **9. CONSTRUCTION AND SEVERABILITY**

27 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
28 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
construction of this Consent Judgment, the terms and conditions shall not be construed against

1 any Party.

2 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court
3 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
4 affected.

5 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
6 construed in accordance with the laws of the State of California.

7 **10. PROVISION OF NOTICE**

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

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

12 Chris Heptinstall, Executive Director
13 Environmental Research Center
14 3111 Camino Del Rio North, Suite 400
15 San Diego, CA 92108

16 With a copy to:
17 Philip T. Emmons
18 Law Office of Philip T. Emmons
19 1990 N. California Blvd., 8th Floor
20 Walnut Creek, CA 94596
21 T: (925) 287-6436
22 F: (925) 287-6437

23 **FUTUREBIOTICS, LLC**

24 Futurebiotics, LLC
25 Attn: Saif Kibria and Steve Welling
26 70 Commerce Drive
27 Hauppauge, NY 11788

28 With copies to:

ERIC HERSHBERGER, ESQ.
862 Bluffview Drive
Columbus, Ohio 43235
ebhohiolaw@gmail.com

1 T: 614-205-2234

2 Monty Agarwal
3 Arnold & Porter LLP
4 Three Embarcadero Center, 10th Floor
5 San Francisco, CA 94111-3823
6 T: (415) 471-3274
7 F: (415) 471-3400

8 E-Mail:monty.agarwal@aporter.com

9 11. COURT APPROVAL

10 11.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
11 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
12 Consent Judgment.

13 11.2 If the California Attorney General objects to any term in this Consent Judgment,
14 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
15 prior to the hearing on the motion.

16 11.3 If this Stipulated Consent Judgment is not approved by the Court despite the
17 Parties' best efforts, it shall be null and void and have no force or effect.

18 12. EXECUTION AND COUNTERPARTS

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

22 13. ENTIRE AGREEMENT, AUTHORIZATION

23 13.1 This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
25 negotiations, commitments and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any Party.
27 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
28 exist or to bind any Party.

13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
2 provided herein, each Party shall bear its own fees and costs.

3 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

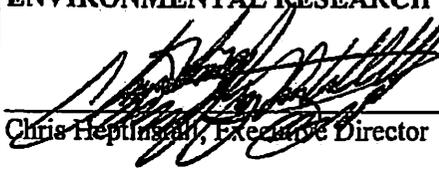
4 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
5 The Parties request the Court to fully review this Consent Judgment and, being fully informed
6 regarding the matters which are the subject of this Action, to:

7 (a) Find that the terms and provisions of this Consent Judgment represent a good
8 faith settlement of all matters raised by the allegations of the Amended Complaint, that the
9 matter has been diligently prosecuted, and that the public interest is served by such settlement;
10 and

11 (b) Make the findings pursuant to California Health and Safety Code section
12 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

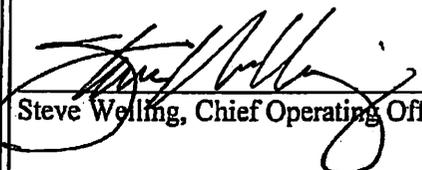
13 **IT IS SO STIPULATED:**

14
15 **ENVIRONMENTAL RESEARCH CENTER, INC.**

16
17 
18 _____
Chris Heptinstall, Executive Director

Dated: 12/10/2015

19
20 **FUTUREBIOTICS, LLC**

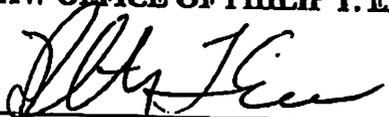
21
22 
23 _____
Steve Weiling, Chief Operating Officer

Dated: 11 Dec 2015

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APPROVED AS TO FORM:

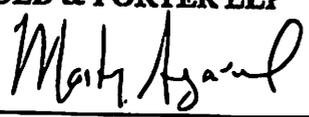
LAW OFFICE OF PHILIP T. EMMONS



Dated: 12/10/15

Philip T. Emmons
Counsel for Environmental Research Center, Inc.

ARNOLD & PORTER LLP



Dated: 12/18/15

Monty Agarwal
Counsel for Futurebiotics, LLC

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

EXHIBIT A: Notices of Violations

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LAW OFFICE OF
PHILIP T. EMMONS
1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596
Tel: (925) 287-6436

December 10, 2012

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

VIA CERTIFIED MAIL

Current President or CEO
Futurebiotics, LLC
70 Commerce Drive
Hauppauge, NY 11788

VIA PRIORITY MAIL

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

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

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 an attachment with the copy of this letter served on the alleged Violator identified below.

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

Futurebiotics, LLC

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

Futurebiotics Circu A.V. - Lead
Futurebiotics Vital K - Lead

Futurebiotics 100% Pure Shark Cartilage – Lead

Futurebiotics Living Energy - Lead

Futurebiotics Colon Green - Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 10, 2009, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The 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,



Philip T. Emmons, Esq.

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Futurebiotics, LLC)

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

Re: Environmental Research Center's Notice of Proposition 65 Violations by Futurebiotics, LLC

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Philip T. Emmons, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: December 10, 2012

Philip T. Emmons

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. 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 December 10, 2012, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Futurebiotics, LLC
70 Commerce Place
Hauppauge, NY 11788

On December 10, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

On December 10, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on December 10, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

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

December 10, 2012

Page 5

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
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 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 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
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 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 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney 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
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 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	

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

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

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, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.
- 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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

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 for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly 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 of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

LAW OFFICE OF
PHILIP T. EMMONS
1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596
Tel: (925) 287-6436

August 29, 2014

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

VIA CERTIFIED MAIL

Current President or CEO
Futurebiotics, LLC
70 Commerce Drive
Hauppauge, NY 11788

VIA PRIORITY MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("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 an attachment with the copy of this letter served on the alleged Violator identified below.

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

Futurebiotics, LLC

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

Futurebiotics Nutrition for Men Male Power – Lead
Futurebiotics Cholesta-Lo – Lead
Futurebiotics Pressur-Lo – Lead
Futurebiotics Nutrition for Men Hair, Skin & Nails – Lead

Futurebiotics Prostadvance - Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 29, 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; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons who purchased the above products in the last three years. 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,



Philip T. Emmons, Esq.

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Futurebiotics, LLC)

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

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Futurebiotics, LLC

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Philip T. Emmons, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: August 29, 2014

Philip T. Emmons

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. 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 August 29, 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
Futurebiotics, LLC
70 Commerce Drive
Hauppauge, NY 11788

On August 29, 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 August 29, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on August 29, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

August 29, 2014

Page 5

Service List

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

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

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

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

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

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

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

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

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

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

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

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

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

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

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

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

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

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

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

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

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

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

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

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

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

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

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

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

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

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

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

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

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

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.

EXHIBIT B

EXHIBIT B: Warning Symbol



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EXHIBIT C

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EXHIBIT C: Letter to Retailers and Distributors

(For use if FUTUREBIOTICS provides warning signs pursuant to Section 3.3)

**THIS COMMUNICATION APPLIES ONLY TO
RETAIL LOCATIONS IN CALIFORNIA**

Futurebiotics has entered into a Consent Judgment with Environmental Research Center, Inc. regarding the presence of lead in specified dietary supplements sold in California, including those sold by its franchisees at retail locations in California.

Under the terms of this Consent Judgment, Futurebiotics is providing the enclosed warning sign to you so that they can be posted in retail stores. The signs must be posted in close proximity to each respective product that is expressly identified on the sign, such that the consumer, under customary conditions of purchase, could reasonably determine that the warning relates to the specific products listed. No other statements about Proposition 65 or lead may accompany the warning. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers prior to purchasing the products. For example, a warning sign placed in the aisle or shelf or display where the product is offered or displayed for sale would be in close proximity to the product.

Please sign and return the written acknowledgment below within 30 days of receiving this letter to acknowledge that you have received the warnings and that you will use them in accordance with these specifications until you receive written instruction from Futurebiotics to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate warning locations in the store, please contact [Contact Information].

Acknowledged by:

_____ (Signature)
_____ (Print Name)
_____ (Company/Store Location)
_____ (Date)

EXHIBIT D

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EXHIBIT D: Follow-Up Letter to Retailers and Distributors

(For use if FUTUREBIOTICS provides warning signs pursuant to Section 3.3)

**THIS COMMUNICATION APPLIES ONLY TO
RETAIL LOCATIONS IN CALIFORNIA**

On [Date], Futurebiotics sent you a letter enclosing signs to place on shelves holding any of the specified dietary supplements identified on the sign, pursuant to a Consent Judgment entered into between Futurebiotics and Environmental Research Center, Inc. (ERC) regarding the presence of lead in specified dietary supplements sold in California.

As set forth in that letter, the signs must be posted in close proximity to each respective product that is expressly identified on the sign, such that the consumer, under customary conditions of purchase, could reasonably determine that the warning relates to the specific products listed. No other statements about Proposition 65 or lead may accompany the warning. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers prior to purchasing the products. For example, a warning sign placed in the aisle or shelf or display where the product is offered or displayed for sale would be in close proximity to the product.

We have not received your written acknowledgment that you have received the signs and that your stores will post them as specified. Please sign and return the written acknowledgment below as soon as possible to acknowledge that you have received the signs and that they will be used or provided in accordance with these specifications until you receive written instructions from Futurebiotics to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate warning locations on the product(s), please contact [Contact Information].

Acknowledged by:

(Signature)

(Print Name)

(Company/Store Location)

(Date)

EXHIBIT E

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WARNING
(California Proposition 65)
Products with the symbol



contain a substance
known to the State of California
to cause cancer and birth defects or other
reproductive harm.

EXHIBIT F

WARNING
(California Proposition 65)

These products contain a substance
known to the State of California
to cause cancer and birth defects or other
reproductive harm.

[List of Products, if required by Section 3.4]

[For more information, please visit [insert URL]]

EXHIBIT G

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EXHIBIT G: Exemplar Section 3.4 Invoice Warning

[California Proposition 65] WARNING [(California Proposition 65)]: This product contains [lead,] [a] chemical[s] known [to the State of California] to cause [cancer and] birth defects or other reproductive harm.
Products on the invoice with "P65" indicator are affected product(s)

OR

[California Proposition 65] WARNING [(California Proposition 65)]: This product contains [lead,] [a] substance[s] known [to the State of California] to cause [cancer and] birth defects or other reproductive harm.
Products on the invoice with "P65" indicator are affected product(s)