

1 WILLIAM F. WRAITH, SBN 185927
WRAITH LAW
2 24422 Avenida de la Carlota, Suite 400
Laguna Hills, CA 92653
3 Tel: (949) 452-1234
Fax: (949) 452-1102
4

Attorney For Plaintiff,
5 ENVIRONMENTAL RESEARCH CENTER, INC.

6 JOHN R. EPPERSON, SBN 183347
7 COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
8 San Francisco, CA 94111
Tel: (415) 433-1900
9 Fax: (415) 433-5530
Email: jepperson@cwclaw.com
10

Attorney for Defendant
11 NEW WHEY NUTRITION, LLC
12

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

15 ENVIRONMENTAL RESEARCH CENTER,
16 INC., a non-profit California corporation,

17 Plaintiff,

18 v.

19 NEW WHEY NUTRITION, LLC and DOES
20 1-25, Inclusive,

21 Defendants.
22

CASE NO. RG15787566

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 29, 2015

Trial Date: June 9, 2017

23 **1. INTRODUCTION**

24 **1.1** On September 29, 2015, Plaintiff Environmental Research Center, Inc. (“ERC”),
25 a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
26 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
27 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
28 against New Whey Nutrition, LLC (“NEW WHEY NUTRITION”) and Does 1-25. In this

1 action, ERC alleges that a number of products manufactured, distributed or sold by NEW
2 WHEY NUTRITION contain lead, a chemical listed under Proposition 65 as a carcinogen and
3 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
4 warning. These products (referred to hereinafter individually as a “Covered Product” or
5 collectively as “Covered Products”) are:

- 6 a) New Whey Nutrition Multi-Pro Whey Isolate Blend Swiss Chocolate
- 7 b) New Whey Nutrition Multi-Pro Whey Isolate Blend Vanilla Cinnamon
- 8 c) New Whey Nutrition Bio Engineered Waximaize Fruit Punch
- 9 d) New Whey Nutrition Bio Engineered Waximaize Grape

10 **1.2** ERC and NEW WHEY NUTRITION are hereinafter referred to individually as
11 a “Party” or collectively as the “Parties.”

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

16 **1.4** For purposes of this Consent Judgment, the Parties agree that NEW WHEY
17 NUTRITION is a business entity that has employed ten or more persons at all times relevant to
18 this action, and qualifies as a “person in the course of business” within the meaning of Proposition
19 65. NEW WHEY NUTRITION manufactures, distributes and sells the Covered Products.

20 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
21 dated June 15, 2015 that was served on the California Attorney General, other public enforcers,
22 and NEW WHEY NUTRITION (“Notice”). A true and correct copy of the Notice is attached as
23 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
24 Notice was mailed and uploaded to the Attorney General’s website, and no designated
25 governmental entity has filed a complaint against NEW WHEY NUTRITION with regard to the
26 Covered Products or the alleged violations.

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

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

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

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

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

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning six months from the Effective Date (“Compliance Date”), NEW
28 WHEY NUTRITION shall be permanently enjoined from manufacturing for sale in the State of

1 California, "Distributing into the State of California", or directly selling in the State of
2 California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of
3 more than 0.5 micrograms per day of lead as that term is defined in Section 3.1.2 when the
4 maximum suggested dose is taken as directed on the Covered Product's label, unless it meets
5 the warning requirements under Section 3.2.

6 Beginning on the Effective Date, NEW WHEY NUTRITION shall use Good
7 Manufacturing Practices conforming with National Sanitation Foundation guidelines for
8 manufacturing of any Covered Products distributed into the State of California.

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

13 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
14 Level" shall be measured in micrograms, and shall be calculated using the following formula:
15 micrograms of lead per gram of product, minus the amounts of lead listed in Table 3.1.3 below
16 (which for purposes of this Consent Judgment shall be treated as naturally occurring)
17 multiplied by grams of product per serving of the product (using the largest serving size
18 appearing on the product label), multiplied by servings of the product per day (using the largest
19 number of servings in a recommended dosage appearing on the product label), which equals
20 micrograms of lead exposure per day.

21 TABLE 3.1.2

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (Elemental)	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram

1	Magnesium Hydroxide	0.4 micrograms/gram
2	Zinc Gluconate	0.8 micrograms/gram
3	Potassium Chloride	1.1 micrograms/gram
4	Cocoa-powder	1.0 microgram/gram

5
6 If NEW WHEY NUTRITION wishes to exclude the naturally occurring lead set forth in
7 this section, it must, prior to the Effective Date, provide ERC with the percentage and weight of
8 each ingredient for all Covered Products for which it is requesting that the exclusion be applied.
9 In the event that a dispute arises with respect to compliance with the terms of this Consent
10 Judgment as to any contribution from naturally occurring lead levels under the Section, the
11 Parties shall meet and confer as set forth in Section 15.

12 3.2 Clear and Reasonable Warnings

13 If NEW WHEY NUTRITION is required to provide a warning pursuant to Section 3.1, the
14 following warning must be utilized:

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

17 NEW WHEY NUTRITION shall use the phrase “cancer and” in the warning only if the maximum
18 daily dose recommended on the label contains more than 15 micrograms of lead as determined
19 pursuant to the quality control methodology set forth in Section 3.4.

20 The warning shall be securely affixed to or printed upon the container or label of each
21 Covered Product. In addition, for Covered Products sold over NEW WHEY NUTRITION’s
22 website, the warning shall appear on NEW WHEY NUTRITION’s checkout page on its website
23 for California consumers identifying any Covered Product, and also appear prior to completing
24 checkout on NEW WHEY NUTRITION’s website when a California delivery address is
25 indicated for any purchase of any Covered Product.

26 The warning shall be at least the same size as the largest of any other health or safety
27 warnings also appearing on its website or on the label or container of NEW WHEY
28 NUTRITION’s product packaging and the word “**WARNING**” shall be in all capital letters and in

1 bold print. No other statements about Proposition 65 or lead may accompany the warning.

2 NEW WHEY NUTRITION must display the above warnings with such conspicuousness,
3 as compared with other words, statements, or design of the label or container, as applicable, to
4 render the warning likely to be read and understood by an ordinary individual under customary
5 conditions of purchase or use of the product.

6 **3.3 Reformulated Covered Products**

7 A Reformulated Covered Product is one for which the Daily Lead Exposure Level, taking
8 in to account the naturally-occurring lead as defined in Section 3.1.2, when the maximum
9 suggested dose is taken as directed on the Reformulated Covered Product’s label, contains no
10 more than 0.5 micrograms of lead per day as determined by the quality control methodology
11 described in Section 3.4.

12 **3.4 Testing and Quality Control Methodology**

13 **3.4.1** Beginning within one year of the Effective Date, NEW WHEY
14 NUTRITION shall arrange for lead testing of the Covered Products at least once a year for a
15 minimum of three consecutive years by arranging for testing of at least five randomly selected
16 samples of each of the Covered Products, in the form intended for sale to the end-user, which
17 NEW WHEY NUTRITION intends to sell or is manufacturing for sale in California, directly
18 selling to a consumer in California or “Distributing into California.” The testing requirement
19 does not apply to any of the Covered Products for which NEW WHEY NUTRITION has
20 provided the warning specified in Section 3.2 or for Covered Products that are no longer
21 manufactured.

22 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level”, the
23 arithmetic mean lead detection result of the randomly selected samples set forth in section 3.4.1
24 of the Covered Products will be controlling.

25 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
26 laboratory method that complies with the performance and quality control factors appropriate
27 for the method used, including limit of detection, qualification, accuracy, and precision that
28 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)

1 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
2 method subsequently agreed to in writing by the Parties.

3 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
4 independent third party laboratory certified by the California Environmental Laboratory
5 Accreditation Program or an independent third-party laboratory that is registered with the
6 United States Food & Drug Administration.

7 **3.4.5** Nothing in this Consent Judgment shall limit NEW WHEY
8 NUTRITION's ability to conduct, or require that others conduct, additional testing of the
9 Covered Products, including the raw materials used in their manufacture.

10 **3.4.6** Beginning on the Effective Date and continuing for a period of five
11 years, NEW WHEY NUTRITION shall arrange for copies of all laboratory reports with results
12 of testing for lead content under Section 3.4.1 to be automatically sent by the testing laboratory
13 directly to ERC within ten days after completion of the testing. NEW WHEY NUTRITION
14 shall retain all test results and documentation for a period of five years from the date of each
15 test.

16 **4. SETTLEMENT PAYMENT**

17 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
18 penalties, attorney's fees, and costs, NEW WHEY NUTRITION shall make a total payment of
19 \$40,000.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. NEW
20 WHEY NUTRITION shall make this payment by wire transfer to ERC's escrow account, for
21 which ERC will give NEW WHEY NUTRITION the necessary account information. The
22 Total Settlement Amount shall be apportioned as follows:

23 **4.2** \$3,000.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$2,250.00) 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% (\$750.00) of the civil penalty.

1 **4.3** \$6,276.44 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 **4.4** \$15,170.00 shall be distributed to William F. Wraith as reimbursement of ERC's
4 attorney's fees, while \$15,553.56 shall be distributed to ERC for its in-house legal fees.

5 **5. MODIFICATION OF CONSENT JUDGMENT**

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

9 **5.2** If NEW WHEY NUTRITION seeks to modify this Consent Judgment under
10 Section 5.1, then NEW WHEY NUTRITION must provide written notice to ERC of its intent
11 ("Notice of Intent"). If ERC seeks to meet and confer regarding the proposed modification in
12 the Notice of Intent, then ERC must provide written notice to NEW WHEY NUTRITION
13 within thirty days of receiving the Notice of Intent. If ERC notifies NEW WHEY NUTRITION
14 in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in
15 good faith as required in this Section. The Parties shall meet in person or via telephone within
16 thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty days of
17 such meeting, if ERC disputes the proposed modification, ERC shall provide to NEW WHEY
18 NUTRITION a written basis for its position. The Parties shall continue to meet and confer for
19 an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
20 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
21 period.

22 **5.3** In the event that NEW WHEY NUTRITION initiates or otherwise requests a
23 modification under Section 5.1, and the meet and confer process leads to a joint motion or
24 application of the Consent Judgment, NEW WHEY NUTRITION shall reimburse ERC its
25 costs and reasonable attorney's fees for the time spent in the meet-and-confer process and filing
26 and arguing the motion or application.

27 **5.4** Where the meet-and-confer process does not lead to a joint motion or
28 application in support of a modification of the Consent Judgment, then either Party may seek

1 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
2 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
3 means a party who is successful in obtaining relief more favorable to it than the relief that the
4 other party was amenable to providing during the Parties' good faith attempt to resolve the
5 dispute that is the subject of the modification.

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

8 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
9 this Consent Judgment.

10 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
11 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
12 inform NEW WHEY NUTRITION in a reasonably prompt manner of its test results, including
13 information sufficient to permit NEW WHEY NUTRITION to identify the Covered Products at
14 issue. NEW WHEY NUTRITION shall, within thirty days following such notice, provide ERC
15 with testing information, from an independent third-party laboratory meeting the requirements
16 of Sections 3.4.1 and 3.4.2, demonstrating NEW WHEY NUTRITION's compliance with the
17 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to
18 ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

27 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
28 behalf of itself and in the public interest, and NEW WHEY NUTRITION and its respective

1 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
2 affiliates, suppliers, franchisees, licensees, customers (not including private label customers of
3 NEW WHEY NUTRITION), distributors, wholesalers, retailers, and all other upstream and
4 downstream entities in the distribution chain of any Covered Product, and the predecessors,
5 successors and assigns of any of them (collectively, "Released Parties"), from any and all
6 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
7 expenses asserted, or that could have been asserted from the handling, use, or consumption of
8 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
9 regulations arising from the failure to provide Proposition 65 warnings on the Covered
10 Products regarding lead up to and including the Effective Date.

11 **8.2** ERC on its own behalf only, on one hand, and NEW WHEY NUTRITION on its
12 own behalf only, on the other, further waive and release any and all claims they may have
13 against each other for all actions or statements made or undertaken in the course of seeking or
14 opposing enforcement of Proposition 65 in connection with the Notice or Complaint up through
15 and including the Effective Date, provided, however, that nothing in Section 8 shall affect or
16 limit any Party's right to seek to enforce the terms of this Consent Judgment.

17 **8.3** It is possible that other claims not known to the Parties arising out of the facts
18 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
19 discovered. ERC on behalf of itself only, on one hand, and NEW WHEY NUTRITION, on the
20 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include
21 all such claims up through the Effective Date, including all rights of action therefore. ERC and
22 NEW WHEY NUTRITION acknowledge that the claims released in Sections 8.1 and 8.2 above
23 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
24 any such unknown claims. California Civil Code section 1542 reads as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
28 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

1 ERC on behalf of itself only, on the one hand, and NEW WHEY NUTRITION, on the other
2 hand, acknowledge and understand the significance and consequences of this specific waiver of
3 California Civil Code section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
6 in the Covered Products as set forth in the Notice and the Complaint.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of NEW
9 WHEY NUTRITION's products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

17 All notices required to be given to either Party to this Consent Judgment by the other shall
18 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
19 email may also be sent.

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

21 Chris Heptinstall, Executive Director, Environmental Research Center
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Tel: (619) 500-3090
25 Email: chris_erc501c3@yahoo.com

26 With a copy to:

27 WILLIAM F. WRAITH
28 WRAITH LAW
24422 Avenida de la Carlota, Suite 400
Laguna Hills, CA 92653
Tel: (949) 452-1234

1 Fax: (949) 452-1102

2
3 **NEW WHEY NUTRITION, LLC**

4 5707 Dot Com Court
5 Suite 1079
6 Oviedo, FL 32765

7 With a copy to:

8 JOHN R. EPPERSON
9 COOPER, WHITE & COOPER LLP
10 201 California Street, 17th Floor
11 San Francisco, CA 94111
12 Tel: (415) 433-1900
13 Fax: (415) 433-5530
14 Email: jepperson@cwclaw.com

15
16 **12. COURT APPROVAL**

17 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
18 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
19 Consent Judgment.

20 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
21 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
22 prior to the hearing on the motion.

23 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
24 void and have no force or effect.

25 **13. EXECUTION AND COUNTERPARTS**

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

29 **14. DRAFTING**

30 The terms of this Consent Judgment have been reviewed by the respective counsel for each
31 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
32 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
5 equally in the preparation and drafting of this Consent Judgment.

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

7 If a dispute arises with respect to either Party's compliance with the terms of this Consent
8 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
9 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
10 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
11 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
12 used in the preceding sentence, the term "prevailing party" means a party who is successful in
13 obtaining relief more favorable to it than the relief that the other party was amenable to providing
14 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
15 action.

16 **16. ENTIRE AGREEMENT, AUTHORIZATION**

17 **16.1** This Consent Judgment contains the sole and entire agreement and
18 understanding of the Parties with respect to the entire subject matter herein, and any and all
19 prior discussions, negotiations, commitments and understandings related hereto. No
20 representations, oral or otherwise, express or implied, other than those contained herein have
21 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
22 herein, shall be deemed to exist or to bind any Party.

23 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
25 explicitly provided herein, each Party shall bear its own fees and costs.

26 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
27 **CONSENT JUDGMENT**

28 This Consent Judgment has come before the Court upon the request of the Parties. The

1 Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

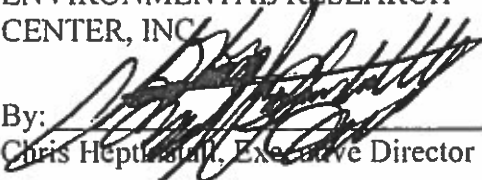
3 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
4 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
5 been diligently prosecuted, and that the public interest is served by such settlement; and

6 (2) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8
9 **IT IS SO STIPULATED:**

10 Dated: 2/8/, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC

By: 
Chris Heptinstall, Executive Director

13 Dated: _____, 2015


NEW WHEY NUTRITION, LLC

By:
Its:

17 **APPROVED AS TO FORM:**

18 Dated: February 9, 2015

WRAITH, LAW

By: 
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

23 Dated: _____, 2015

COOPER, WHITE & COOPER LLP

By: _____
John R. Epperson
Attorney for Defendant New Whey
Nutrition, LLC

1 Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

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

6 (2) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

Dated: _____, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: February 17, 2015

NEW WHEY NUTRITION, LLC


By: Chuck Walkley
Its: CEO

APPROVED AS TO FORM:

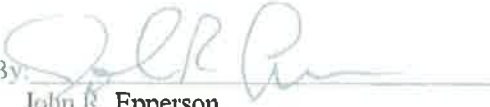
Dated: _____, 2015

WRAITH LAW

By: _____
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

Dated: February 16, 2015

COOPER, WHITE & COOPER LLP


By: John R. Epperson
Attorney for Defendant New Whey
Nutrition, LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2015

Judge of the Superior Court

EXHIBIT “A”

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

June 15, 2015

**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, 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 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:

New Whey Nutrition, LLC

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

New Whey Nutrition Multi-Pro Whey Isolate Blend Swiss Chocolate - Lead
New Whey Nutrition Multi-Pro Whey Isolate Blend Vanilla Cinnamon - Lead
New Whey Nutrition Bio Engineered Waximaize Fruit Punch – Lead
New Whey Nutrition Bio Engineered Waximaize Grape - 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.

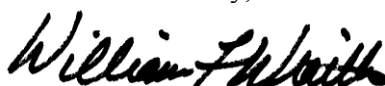
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred 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 June 15, 2012, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, 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 located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, 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 New Whey Nutrition, LLC and its Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

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

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.

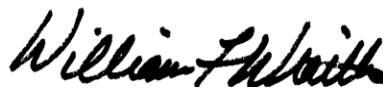
2. I am an attorney for the noticing party.

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 chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 15, 2015



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 June 15, 2015, 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
New Whey Nutrition, LLC
5707 Dot Com Court, Suite 1079
Oviedo, FL 32765

Corporation Service Company
(Registered Agent for New Whey
Nutrition, LLC)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

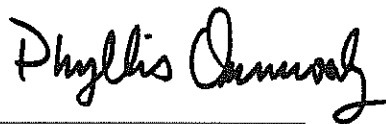
Corporation Service Company
(Registered Agent for New Whey
Nutrition, LLC)
1201 Hays Street
Tallahassee, FL 32301

On June 15, 2015, I verified 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)** were served on the following party when a true and correct copy thereof was uploaded 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 June 15, 2015, 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 June 15, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 15, 2015

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
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 2nd 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., 3rd 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 3rd 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,
16th 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
201 Commercial Street
Nevada City, CA 95959

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

District Attorney, Humboldt County
825 5th Street 4th 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 12th 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, 2nd 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