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6 Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER, INC.

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12 Attorney for Defendant  
BIO NUTRITION, INC.

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

16 **ENVIRONMENTAL RESEARCH**  
17 **CENTER, INC. a California non-profit**  
18 **corporation**

19 **Plaintiff,**

20 **v.**

21 **BIO NUTRITION, INC., ONLY**  
22 **NATURAL INC., and DOES 1-100**

23 **Defendants.**

**CASE NO. RG16818887**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 9, 2016

Trial Date: None set

24 **1. INTRODUCTION**

25 On June 9, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit  
26 corporation, as a private enforcer, and in the public interest, initiated this action by filing a  
27 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant  
28 to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition

**STIPULATED CONSENT JUDGMENT**

**CASE NO. RG16818887**

1 65"), against Bio Nutrition, Inc. ("Bio Nutrition") and DOES 1-100. The First Amended  
2 Complaint ("FAC") was filed thereafter adding Only Natural Inc. as a defendant. Bio Nutrition,  
3 Inc., and Only Natural, Inc., are hereinafter referred to as "Defendants." In this action, ERC  
4 alleges that a number of products manufactured, distributed and/or sold by Defendants contain  
5 lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive  
6 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.  
7 These products (referred to hereinafter individually as a "Covered Product," or collectively as  
8 "Covered Products") are set forth in the Notices attached hereto as Exhibits "A".

9 1.2 ERC and Defendants are hereinafter referred to individually as a "Party," or  
10 collectively as the "Parties."

11 1.3 ERC is a 501(c)(3) California non-profit corporation dedicated to, among other  
12 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
14 and encouraging corporate responsibility.

15 1.4 Bio Nutrition and Only Natural Inc. are New York Corporations each of which has  
16 employed ten or more persons at all times relevant to this action, and qualifies as a "person in the  
17 course of business" within the meaning of Proposition 65. Defendants manufacture, distribute,  
18 and/or sell the Covered Products.

19 1.5 The FAC is based on allegations contained in ERC's Notices of Violation dated  
20 March 30, 2016, November 14, 2016, and December 22, 2016, that were served on the  
21 California Attorney General, other public enforcers, and defendants ("Notices"). True and  
22 correct copy of the Notices are attached hereto collectively as Exhibit A, and are hereby  
23 incorporated by reference. At the time of filing of the Motion to Approve in this matter, more  
24 than 60 days will have passed since the Notices were mailed and uploaded to the Attorney  
25 General's website.

26 1.6 ERC's Notices and FAC allege that use of the Covered Products exposes  
27 persons in California to lead and/or cadmium without first providing clear and reasonable  
28 warnings in violation of California Health and Safety Code section 25249.6. Defendants deny

1 all material allegations contained in the Notices and FAC.

2 1.7 The Parties have entered into this Consent Judgment in order to settle,  
3 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
4 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
5 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
6 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,  
7 distributors, wholesalers, or retailers. Except for the representations made above, nothing in this  
8 Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law, or  
9 violation of law, nor shall compliance with this Consent Judgment be construed as an  
10 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
11 purpose.

12 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
14 other or future legal proceeding unrelated to these proceedings.

15 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as  
16 a Judgment by this Court. The date by which Defendants must comply with the injunctive relief  
17 set forth in Section 3 is six months from the Effective Date ("Compliance Date").

## 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 Defendants as to the acts alleged in the FAC, that venue is proper in Alameda County, and  
23 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
24 claims up through and including the Effective Date which were or could have been asserted in this  
25 action based on the facts alleged in the Notices and FAC.

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

27 3.1 Beginning on the Compliance Date, at any time that either of the Defendants  
28 qualify as a "person in the course of business" within the meaning of Proposition 65, including

1 having more than nine employees as required by Health & Safety Code section 25249.11(b),  
2 such Defendant(s) shall be permanently enjoined from manufacturing for sale in the State of  
3 California, "Distributing into the State of California," or directly selling in the State of  
4 California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of  
5 more than 0.5 micrograms per day of lead, or "Daily Cadmium Exposure Level" of more than  
6 4.10 micrograms per day of cadmium, when the maximum suggested dose is taken as directed on  
7 the Covered Product's label, unless it meets the warning requirements under Section 3.2. Any  
8 Covered Product that is already in the stream of commerce prior to the Compliance Date shall be  
9 exempt from the requirements of Proposition 65.

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

14           **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
15 Level," and "Daily Cadmium Exposure Level," shall be measured in micrograms, and shall be  
16 calculated using the following formula: micrograms of lead or cadmium per gram of product,  
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 or cadmium exposure per day.

21           **3.2 Clear and Reasonable Warnings**

22           If Defendants are required to provide a warning pursuant to Section 3.1, the following  
23 warning must be utilized ("Warning"):

24           Prior to August 30, 2018, either of the below Warnings may be utilized:

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

27           After August 30, 2018, the following warning must be utilized:  
28

1           **WARNING:** This product can expose you to chemicals including lead [and cadmium]  
2 which is [are] known to the State of California to cause [cancer and] birth defects or other  
3 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

4           Prior to August 30, 2018, Bio Nutrition may choose whether to identify the listed  
5 chemical(s) contained in the Covered Product within the Warning. After August 30, 2018, the  
6 listed chemical(s) must be identified in the Warning. The phrase "cancer and" in the Warning must  
7 be used only if the maximum daily dose recommended on the label contains more than 15  
8 micrograms of lead. No other statements about Proposition 65, cadmium, or lead may accompany  
9 the Warning.

10           The Warning shall be securely affixed to or printed upon the container or label of each  
11 Covered Product. The Warning shall be at least the same size as the largest of any other health or  
12 safety warnings also appearing on the label or container of Defendants' product packaging, if  
13 any, and in such event the word "WARNING" shall be in all capital letters and in bold print.

14           Defendants must display the above Warning with such conspicuousness, as compared with  
15 other words, statements, design of the label or container, as applicable, to render the Warning  
16 likely to be read and understood by an ordinary individual under customary conditions of purchase  
17 or use of the product.

#### 18           **4. SETTLEMENT PAYMENT**

19           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
20 penalties, attorney's fees, and costs, Defendants, collectively, shall make a total payment of  
21 \$150,000.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date.

22 Defendants shall make this payment by wire transfer to ERC's escrow account, for which ERC  
23 will give Defendants the necessary account information. The Total Settlement Amount shall be  
24 apportioned as follows:

25           **4.2** Of the Total Settlement Amount, \$45,597.77 shall be considered a civil  
26 penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75%  
27 (\$34,198.33) of the civil penalty to the Office of Environmental Health Hazard Assessment  
28 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in

1 accordance with California Health and Safety Code §25249.12(c). ERC will retain the  
2 remaining 25% (\$11,399.44) of the civil penalty.

3 4.3 Of the Total Settlement Amount, \$8,070.81 shall be distributed to ERC as  
4 reimbursement to ERC for reasonable costs incurred in bringing this action. This settlement  
5 payment includes all costs and attorneys' fees incurred by or on behalf of ERC through and  
6 including the approval of this consent judgment.

7 4.4 Of the Total Settlement Amount, \$34,198.27 shall be distributed to ERC as an  
8 Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11,  
9 sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the  
10 same public harm as allegedly caused by Defendant in this matter. These activities are detailed  
11 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic  
12 chemicals in dietary supplement products in California. ERC's activities have had, and will  
13 continue to have, a direct and primary effect within the State of California because California  
14 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or  
15 cadmium in dietary supplements and/or by providing clear and reasonable warnings to California  
16 consumers prior to ingestion of the products.

17 Based on a review of past years' actual budgets, ERC is providing the following list of  
18 activities ERC engages in to protect California consumers through Proposition 65 citizen  
19 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
20 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
21 supplement products that may contain lead and/or cadmium and are sold to California  
22 consumers. This work includes continued monitoring and enforcement of past consent judgments  
23 and settlements to ensure companies are in compliance with their obligations thereunder, with a  
24 specific focus on those judgments and settlements concerning lead and/or cadmium. This work  
25 also includes investigation of new companies that ERC does not obtain any recovery through  
26 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-25%): maintaining  
27 ERC's Voluntary Compliance Program by acquiring products from companies, developing and  
28 maintaining a case file, testing products from these companies, providing the test results and

1 supporting documentation to the companies, and offering guidance in warning or implementing a  
2 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT  
3 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the  
4 numbers of contaminated products that reach California consumers by providing access to free  
5 testing for lead in dietary supplement products (Products submitted to the program are screened  
6 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
7 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
8 that submitted the product).

9 ERC shall be fully accountable in that it will maintain adequate records to document and  
10 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are  
11 being spent only for the proper, designated purposes described in this Consent Judgment. ERC  
12 shall provide the Attorney General, within thirty days of any request, copies of documentation  
13 demonstrating how such funds have been spent.

14 4.5 Of the Total Settlement Amount, \$22,280.00 shall be distributed to Michael  
15 Freund as reimbursement of ERC's attorney's fees, \$55.00 shall be distributed to Ryan Hoffman  
16 as reimbursement of ERC's attorney's fees while \$39,798.15 shall be distributed to ERC for its  
17 in-house legal fees.

18 4.6 In the event Defendants fail to remit the Total Settlement Payment owed under  
19 Section 4 of this Consent Judgment on or before the Due Date, Defendants shall be deemed to  
20 be in material breach of their obligations under this Consent Judgment. ERC shall provide  
21 written notice of the delinquency to Defendants via electronic mail. If Defendants fails to  
22 deliver the Total Settlement Payment within five (5) days from the written notice, the Total  
23 Settlement Payment shall become immediately due and payable, and shall accrue interest at the  
24 statutory judgment interest rate provided in the Code of Civil Procedure section 685.010.  
25 Additionally, Defendants agree to pay ERC's reasonable attorney's fees and costs for any  
26 efforts to collect the payment due under this Consent Judgment.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by  
3 written stipulation of the Parties, or pursuant to Section 5.4 and (ii) upon entry by the Court of a  
4 modified consent judgment.

5 5.2 If Defendants seek to modify this Consent Judgment under Section 5.1, then  
6 Defendants must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks  
7 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
8 provide written notice to Defendants within thirty days of receiving the Notice of Intent. If  
9 ERC notifies Defendants in a timely manner of ERC's intent to meet and confer, then the  
10 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in  
11 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and  
12 confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC  
13 shall provide to Defendants a written basis for its position. The Parties shall continue to meet  
14 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.  
15 Should it become necessary, the Parties may agree in writing to different deadlines for the  
16 meet-and-confer period.

17 5.3 In the event Defendants initiate or otherwise request a modification under  
18 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
19 Consent Judgment, Defendants shall reimburse ERC its costs and reasonable attorneys' fees  
20 for the time spent in the meet-and-confer process, and filing and arguing the motion or  
21 application. ERC agrees, however, that it shall permit Defendants, or Defendants' attorneys, to  
22 do as much as this work as they are able to do in order to minimize the payment of attorneys'  
23 fees to ERC.

24 5.4 Where the meet-and-confer process does not lead to a joint motion or  
25 application in support of a modification of the Consent Judgment, then either Party may seek  
26 judicial relief on its own.

27 ///

28 ///



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

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

5     **7.     APPLICATION OF CONSENT JUDGMENT**

6         This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their  
7 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
8 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
9 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application  
10 to Covered Products that are not distributed or sold to California consumers.

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

12         8.1     This Consent Judgment is a full, final, and binding resolution between ERC, on  
13 behalf of itself and in the public interest, and Defendants and their respective officers, directors,  
14 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
15 franchisees, licensees, customers (not including private label customers of Bio Nutrition),  
16 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
17 distribution chain of any Covered Product, and the predecessors, successors and assigns of any  
18 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
19 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
20 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses  
21 asserted, or that could have been asserted, from the handling, use, consumption, sale,  
22 distribution, manufacture, or any other possible or any other alleged violation of Proposition 65  
23 or its implementing regulations, with respect to the Covered Products arising from the failure to  
24 provide Proposition 65 warnings on the Covered Products regarding lead and/or cadmium up to  
25 and including the Effective Date.

26         8.2     ERC on its own behalf only, on one hand, and Defendants on their behalf only,  
27 on the other, further waive and release any and all claims they may have against each other for  
28 all actions or statements made or undertaken in the course of seeking or opposing enforcement

1 of Proposition 65 in connection with the Notice or FAC up through and including the Effective  
2 Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek  
3 to enforce the terms of this Consent Judgment.

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

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

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

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

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

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

26 In the event that any of the provisions of this Consent Judgment are held by a court to be  
27 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.  
28

1    **10. GOVERNING LAW**

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

4    **11. PROVISION OF NOTICE**

5           All notices required to be given to any Party to this Consent Judgment by the other shall be  
6 in writing and sent to the following agents listed below via first-class mail and e-mail.

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

8 Chris Heptinstall, Executive Director, Environmental Research Center  
9 3111 Camino Del Rio North, Suite 400  
10 San Diego, CA 92108  
11 Tel: (619) 500-3090  
12 Email: chris\_erc501c3@yahoo.com

13 With a copy to:

14 Michael Freund  
15 Ryan Hoffman  
16 Michael Freund & Associates  
17 1919 Addison Street, Suite 105  
18 Berkeley, CA 94704  
19 Telephone: (510) 540-1992  
20 EMAIL:freund1@aol.com

21    **BIO NUTRITION, INC.**

22 Robert LoMacchio  
23 Bio Nutrition, Inc.  
24 64 Alabama Avenue  
25 Island Park, NY 11558  
26 EMAIL: robbie@onlynaturalinc.com

27 With a copy to:

28 Kenneth E. Chyten, Esq.  
Law Offices of Kenneth E. Chyten  
300 East Esplanade Drive  
Suite 900  
Oxnard, CA 93036  
Telephone: (805) 981-3910  
EMAIL: CHYTEN@CHYTENLAW.COM

1     **12. COURT APPROVAL**

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

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

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

10     **13. EXECUTION AND COUNTERPARTS**

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

14     **14. DRAFTING**

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

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

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

1     **16. ENFORCEMENT**

2             ERC may, by motion or order to show cause before the Superior Court of Alameda  
3 County, seek to enforce the terms and conditions contained in this Consent Judgment. In any  
4 action brought by ERC to seek enforcement this Consent Judgment, ERC may seek whatever  
5 fines, costs, penalties, or remedies as are provided by law for failure to comply with the Consent  
6 Judgment.

7     **17. ENTIRE AGREEMENT, AUTHORIZATION**

8             **17.1** This Consent Judgment contains the sole and entire agreement and  
9 understanding of the Parties with respect to the entire subject matter herein, and any and all  
10 prior discussions, negotiations, commitments and understandings related hereto. No  
11 representations, oral or otherwise, express or implied, other than those contained herein have  
12 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
13 herein, shall be deemed to exist or to bind any Party.

14             **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
15 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
16 explicitly provided herein, each Party shall bear its own Attorneys' fees and costs.

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

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

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

25             (2) Make the findings pursuant to California Health and Safety Code section  
26 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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**IT IS SO STIPULATED:**

Dated: 12/29/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: [Signature]  
Chris Hopwood, Executive Director

Dated: 12/29, 2016

BIO NUTRITION, INC.

By: [Signature]  
President  
Its:

Dated: 12/29, 2016

ONLY NATURAL, INC.

By: [Signature]  
President  
Its:

**APPROVED AS TO FORM:**

Dated: 12/29/, 2016

MICHAEL FREUND & ASSOCIATES

By: [Signature]  
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

Dated: \_\_\_\_\_, 2016

LAW OFFICES OF KENNETH E.  
CHYTEN

By: \_\_\_\_\_  
Kenneth E. Chyten  
Attorney for Defendants Bio Nutrition,  
Inc. and Only Natural, Inc.

2 Dated: 12/29, 2016

CENTER, INC.

3  
4 By:   
Chris Hopper, Executive Director

5 Dated: 12/29, 2016

BIO NUTRITION, INC.

6  
7 By: President  
Its:

8  
9 Dated: 12/29, 2016

ONLY NATURAL, INC.

10  
11 By: President  
Its:

12 APPROVED AS TO FORM:

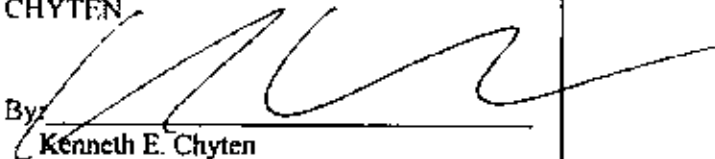
13 Dated: \_\_\_\_\_, 2016

MICHAEL FREUND & ASSOCIATES

14  
15 By: \_\_\_\_\_  
16 Michael Freund  
17 Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

18 Dated: 12/29, 2016

LAW OFFICES OF KENNETH E.  
CHYTEN

19  
20 By:   
21 Kenneth E. Chyten  
22 Attorney for Defendants Bio Nutrition,  
23 Inc. and Only Natural, Inc.

**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: \_\_\_\_\_, 2016

\_\_\_\_\_  
Judge of the Superior Court



EXHIBIT A

---

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

March 30, 2016

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

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

**Bio Nutrition, Inc.**

**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:

1. **Bio Nutrition Inc. Smart Organics Clean & Green Plant Protein Lightly Flavored With Organic Cocoa and Vanilla – Lead, Cadmium**
2. **Bio Nutrition Inc. Moringa Lean - Lead**
3. **Bio Nutrition Inc. 100% Organic Moringa Leaf Powder - Lead**
4. **Bio Nutrition Inc. Gout Out - Lead**
5. **Bio Nutrition Inc. Blood Sugar Wellness - Lead**
6. **Bio Nutrition Inc. Red Marine Algae - Lead**
7. **Bio Nutrition Inc. Total Skin Wellness - Lead**
8. **Bio Nutrition Inc. Prostate Wellness with Pumpkin Seed - Lead**
9. **Bio Nutrition Inc. Liver Wellness - Lead**
10. **Bio Nutrition Inc. Total Colon Wellness - Lead**
11. **Bio Nutrition Inc. Kidney Bladder Wellness - Lead**
12. **Bio Nutrition Inc. Smart Organics Women's Weight Gainer Natural Vanilla Flavor - Lead**

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

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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 March 30, 2013, 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 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 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Bio Nutrition, Inc.)

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 Bio Nutrition, Inc.**

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

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

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

Dated: March 30, 2016



---

Michael Freund

**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 March 30, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Bio Nutrition, Inc.  
64 Alabama Avenue  
Island Park, NY 11558

Current President or CEO  
Bio Nutrition, Inc.  
4090 Ohio Place  
Island Park, NY 11558

Current President or CEO  
Bio Nutrition, Inc.  
65 Alabama Avenue  
Island Park, NY 11558

On March 30, 2016, 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 March 30, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

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

March 30, 2016

Page 5

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On March 30, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on March 30, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 30, 2016

Page 6

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, 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 4<sup>th</sup> 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, 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  
530 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, 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, 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 Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

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

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

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

November 14, 2016

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

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

**Bio Nutrition, Inc.**

**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:

1. **Bio Nutrition Inc. Smart Organics Organic Coconut Water Flakes with Organic Orange Flavor - Lead**
2. **Bio Nutrition Inc. Smart Organics Organic Spirulina Powder - Lead**
3. **Bio Nutrition Inc. Smart Organics Organic ABC Powder - Lead**
4. **Bio Nutrition Inc. Smart Organics Organic Maca Root Powder - Lead**
5. **Bio Nutrition Inc. Smart Organics Organic 3-Day Fat Flush & Detox Lemonade Fast - Lead**
6. **Bio Nutrition Inc. Smart Organics Organic Moringa Powder - 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 November 14, 2013, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Bio Nutrition Inc.)

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 Bio Nutrition, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: November 14, 2016



---

Michael Freund

**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 November 14, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Bio Nutrition, Inc.  
64 Alabama Avenue  
Island Park, NY 11558

Current President or CEO  
Bio Nutrition, Inc.  
4090 Ohio Place  
Island Park, NY 11558

Current President or CEO  
Bio Nutrition, Inc.  
65 Alabama Avenue  
Island Park, NY 11558

On November 14, 2016, 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 November 14, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

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

November 14, 2016

Page 5

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
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Gregory Alker, Assistant District Attorney  
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gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
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222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
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EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On November 14, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on November 14, 2016, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

**Service List**

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

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

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

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

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

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

District Attorney, 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 4<sup>th</sup> 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, 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, 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, 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 Mateo County  
400 County Cir., 3rd Floor  
Redwood City, CA 94063

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

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

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

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

November 14, 2016

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

**Only Natural Inc.**

**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:

1. Only Natural Inc. Body Cleanse – Lead
2. Only Natural Inc. Yeast Therapy – Lead
3. Bio Nutrition Inc. Smart Organics Organic 3-Day Fat Flush & Detox Lemonade Fast – Lead
4. Only Natural Inc. Fat Fighter - Lead
5. Only Natural Inc. Moringa Pure (Moringa Oleifera) 1,000 mg – Lead
6. Only Natural Inc. Easy Colon Cleaner – Lead
7. Only Natural Inc. Chitosan Fat Blocker – Lead
8. Only Natural Inc. Garcinia Cambogia 60% HCA 500 mg – Lead
9. Only Natural Inc. Horny Goat Weed Plus Formulated for Men and Women 500 mg – Lead
10. Only Natural Inc. Ultimate Acai Diet – Lead
11. Bio Nutrition Inc. Smart Organics Organic Spirulina Powder – Lead
12. Bio Nutrition Inc. Smart Organics Organic Moringa Powder - Lead
13. Only Natural Inc. Super Fat Fighter Nopal Leaner – Lead
14. Only Natural Inc. Nopal Cactus 1000 – Lead

November 14, 2016

Page 2

15. Only Natural Inc. For Hair Only – Lead

16. Bio Nutrition Inc. Smart Organics Organic Coconut Water Flakes with Organic Orange Flavor – Lead

17. Only Natural Inc. Ultimate Acai Diet with Garcinia Cambogia – Lead

18. Only Natural Inc. For Men Only - 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 November 14, 2013, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Only Natural Inc.)

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 Only Natural Inc.**

I, Michael Freund, declare:

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

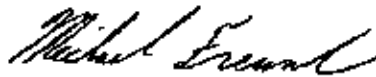
2. I am an attorney for the noticing party.

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: November 14, 2016



---

Michael Freund



**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 November 14, 2016, I served the following documents: **NOTICE OF VIOLATION 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  
Only Natural Inc.  
31 Saratoga Boulevard  
Island Park, NY 11558

On November 14, 2016, 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 November 14, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

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

November 14, 2016

Page 5

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On November 14 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on November 14, 2016, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

**Service List**

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

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

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

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

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

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

District Attorney, Del Norte County  
450 H Street, Room 171  
Creoscent 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 4<sup>th</sup> 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, 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, 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, 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 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 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, 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, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

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

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

December 22, 2016

**NOTICE OF VIOLATION 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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

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

**Bio Nutrition, Inc.**

**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:

1. **Black Raspberry - Lead**
2. **Garcinia Cambogia - Lead**
3. **Graviola - Lead**
4. **Immune Wellness - 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.

December 22, 2016

Page 2

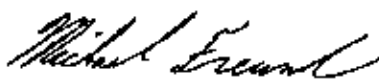
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least December 22, 2013, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Bio Nutrition Inc.)

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 Bio Nutrition, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: December 22, 2016



---

Michael Freund

**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 22, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Bio Nutrition, Inc.  
64 Alabama Avenue  
Island Park, NY 11558

Current President or CEO  
Bio Nutrition, Inc.  
4090 Ohio Place  
Island Park, NY 11558

Current President or CEO  
Bio Nutrition, Inc.  
65 Alabama Avenue  
Island Park, NY 11558

On December 22, 2016, 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 December 22, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

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

December 22, 2016

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Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
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cfepd@yolocounty.org

On December 22, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on December 22, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody



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

December 22, 2016

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**Service List**

District Attorney, Alameda  
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District Attorney, Amador  
County  
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Jackson, CA 95642

District Attorney, Butte  
County  
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245  
Oroville, CA 95965

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County  
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San Andreas, CA 95249

District Attorney, Colusa  
County  
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Colusa, CA 95932

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County  
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Crescent City, CA 95531

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