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11 PROGENEX HOLDINGS, LLC

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF ALAMEDA**

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

17 Plaintiff,

18 v.

19 PROGENEX HOLDINGS, LLC and DOES  
20 1-25, Inclusive,

21 Defendants.

**CASE NO. RG16842984**

**STIPULATED CONSENT  
JUDGMENT**

**Health & Safety Code § 25249.5 et seq.**

**Action Filed: December 19, 2016**

**Trial Date: None set**

22  
23 **1. INTRODUCTION**

24 **1.1** On December 19, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"),  
25 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
26 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the  
27 provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"),  
28 against PROGENEX HOLDINGS, LLC ("PROGENEX") and Does 1-25. In this action, ERC

1 alleges that a number of products manufactured, distributed, or sold by PROGENEX contain  
2 lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive  
3 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.  
4 These products (referred to hereinafter individually as a “Covered Product” or collectively as  
5 “Covered Products”) are:

- 6 • **Progenex Recovery Belgian Chocolate - Lead**
- 7 • **Progenex Recovery Chocolate Peanut Butter Smash - Lead**
- 8 • **Progenex Recovery Strawberry Crème - Lead**
- 9 • **Progenex Recovery Loco Mocha - Lead**
- 10 • **Progenex More Muscle Belgian Chocolate - Lead**
- 11 • **Progenex More Muscle Strawberry Crème - Lead**
- 12 • **Progenex More Muscle Loco Mocha - Lead**
- 13 • **Progenex The Bar Toasted Coconut Almond - Lead**
- 14 • **Progenex The Bar Peanut Butter Caramel Crunch - Lead**
- 15 • **Progenex Cocoon Silk Chocolate - Lead**
- 16 • **Progenex Cocoon Cinnamon Slumber - Lead**
- 17 • **Progenex Build Ignition Blend - Lead**
- 18 • **Progenex Recovery Tropical Vanilla - Lead**
- 19 • **Progenex More Muscle Cookies & Cream - Lead**
- 20 • **Progenex More Muscle Chocolate Peanut Butter Smash – Lead,**
- 21 **Cadmium**
- 22 • **Progenex Flow Island Punch - Lead**

23 1.2 ERC and PROGENEX are hereinafter referred to individually as a “Party” or  
24 collectively as the “Parties.”

25 1.3 ERC is a 501(c)(3) California non-profit corporation dedicated to, among other  
26 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
27 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
28 and encouraging corporate responsibility.

1           **1.4**     For purposes of this Consent Judgment, the Parties agree that PROGENEX is a  
2 business entity that has employed ten or more persons at all times relevant to this action, and  
3 qualifies as a “person in the course of business” within the meaning of Proposition 65.  
4 PROGENEX manufactures, distributes, and/or sells the Covered Products.

5           **1.5**     The Complaint is based on allegations contained in ERC’s Notices of Violation  
6 dated April 29, 2016 and July 20, 2016 that were served on the California Attorney General,  
7 other public enforcers, and PROGENEX (“Notices”). True and correct copies of the 60-Day  
8 Notices dated April 29, 2016 and July 20, 2016 are attached hereto as **Exhibits A and B**  
9 respectively and each is incorporated herein by reference. More than 60 days have passed since  
10 the Notices were served on the Attorney General, public enforcers, and PROGENEX and no  
11 designated governmental entity has filed a complaint against PROGENEX with regard to the  
12 Covered Products or the alleged violations.

13           **1.6**     ERC’s Notices and Complaint allege that use of the Covered Products exposes  
14 persons in California to lead and/or cadmium without first providing clear and reasonable  
15 warnings in violation of California Health and Safety Code section 25249.6. PROGENEX  
16 denies all material allegations contained in the Notices and Complaint.

17           **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
18 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
19 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
20 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
21 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,  
22 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
23 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
24 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
25 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
26 purpose.

1           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
3 current or future legal proceeding unrelated to these proceedings.

4           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered as  
5 a Judgment by this Court.

6           **2.     JURISDICTION AND VENUE**

7           For purposes of this Consent Judgment and any further court action that may become  
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
9 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
10 over PROGENEX as to the acts alleged in the Complaint that venue is proper in Alameda  
11 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
12 resolution of all claims up through and including the Effective Date which were or could have  
13 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

15           **3.1**     Beginning on the Effective Date, PROGENEX shall be permanently enjoined  
16 from manufacturing for sale in the State of California, "Distributing into the State of  
17 California", or directly selling in the State of California, any Covered Products which exposes a  
18 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or  
19 "Daily Cadmium Exposure Level" of more than 4.10 micrograms of cadmium per day unless it  
20 meets the warning requirements under Section 3.2.

21           **3.1.1**   As used in this Consent Judgment, the term "Distributing into the State  
22 of California" shall mean to directly ship a Covered Product into California for sale in  
23 California or to sell a Covered Product to a distributor that PROGENEX knows or has reason to  
24 know will sell the Covered Product in California.

25           **3.1.2**   For purposes of this Consent Judgment, the "Daily Lead Exposure  
26 Level" and "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be  
27 calculated using the following formula: micrograms of lead or cadmium per gram of product,  
28 multiplied by grams of product per serving of the product (using the largest serving size

1 appearing on the product label), multiplied by servings of the product per day (using the largest  
2 number of servings in a recommended dosage appearing on the product label), which equals  
3 micrograms of lead or cadmium exposure per day.

### 4 **3.2 Clear and Reasonable Warnings**

5 If PROGENEX is required to provide a warning pursuant to Section 3.1, the following  
6 warning must be utilized (“Warning”):

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

10 PROGENEX shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure  
11 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control  
12 methodology set forth in Section 3.4.

13 The Warning shall be securely affixed to or printed upon the container or label of each  
14 Covered Product distributed into the State of California as defined in Section 3.1.1. In addition,  
15 for any Covered Product sold over the internet, the Warning shall appear on the checkout page  
16 when a California delivery address is indicated for any purchase of any Covered Product. An  
17 asterisk or other identifying method must be utilized to identify which products on the checkout  
18 page are subject to the Warning.

19 The Warning shall be at least the same size as the largest of any other health or safety  
20 warnings also appearing on its website or on the label or container of PROGENEX’s product  
21 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No  
22 statements contradicting or conflicting with the Warning shall accompany the Warning.

23 PROGENEX must display the above Warning with such conspicuousness, as compared  
24 with other words, statements, design of the label, container, or on its website, as applicable, to  
25 render the Warning likely to be read and understood by an ordinary individual under customary  
26 conditions of purchase or use of the product.

### 27 **3.3 Reformulated Covered Products**

28 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no

1 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more  
2 than 4.10 micrograms of cadmium per day as determined by the quality control methodology  
3 described in Section 3.4.

#### 4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, PROGENEX shall  
6 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a  
7 minimum of five consecutive years by arranging for testing of five randomly selected samples  
8 of each of the Covered Products, in the form intended for sale to the end-user, which  
9 PROGENEX intends to sell or is manufacturing for sale in California, directly selling to a  
10 consumer in California or "Distributing into the State of California." If tests conducted  
11 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
12 each of five consecutive years, then the testing requirements of this Section will no longer be  
13 required as to that Covered Product. However, if during or after the five-year testing period,  
14 PROGENEX changes ingredient suppliers for any of the Covered Products and/or reformulates  
15 any of the Covered Products, PROGENEX shall test that Covered Product annually for at least  
16 four (4) consecutive years after such change is made.

17 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or  
18 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five  
19 (5) randomly selected samples of the Covered Products will be controlling.

20 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
21 laboratory method that complies with the performance and quality control factors appropriate  
22 for the method used, including limit of detection, qualification, accuracy, and precision that  
23 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
25 method subsequently agreed to in writing by the Parties and approved by the Court through  
26 entry of a modified consent judgment.

27 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
28 independent third party laboratory certified by the California Environmental Laboratory

1 Accreditation Program or an independent third-party laboratory that is registered with the  
2 United States Food & Drug Administration.

3           **3.4.5** Nothing in this Consent Judgment shall limit PROGENEX's ability to  
4 conduct, or require that others conduct, additional testing of the Covered Products, including  
5 the raw materials used in their manufacture.

6           **3.4.6** Within thirty (30) days of ERC's written request, PROGENEX shall  
7 deliver lab reports obtained pursuant to Section 3.4 to ERC. PROGENEX shall retain all test  
8 results and documentation for a period of five years from the date of each test.

9       **4. SETTLEMENT PAYMENT**

10           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
11 attorney's fees, and costs, PROGENEX shall make a total payment to ERC of \$125,000.00  
12 ("Total Settlement Amount") in six monthly installments plus 8% simple interest on the  
13 balance remaining after the first payment. The Total Settlement Amount including interest  
14 shall be paid on the following schedule ("Due Dates"):

- 15           \$20,833.33 due within 5 days of the Effective Date
- 16           \$21,527.77 due within 35 days of the Effective Date
- 17           \$21,388.89 due within 65 days of the Effective Date
- 18           \$21,250.00 due within 95 days of the Effective Date
- 19           \$21,111.11 due within 125 days of the Effective Date
- 20           \$20,972.24 due within 155 days of the Effective Date

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

24           **4.2** \$48,572.05 shall be considered a civil penalty pursuant to California Health and  
25 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$36,429.04) of the civil penalty to  
26 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
28

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$12,143.01) of the civil  
2 penalty.

3 4.3 \$4,437.80 shall be distributed to ERC as reimbursement to ERC for reasonable  
4 costs incurred in bringing this action.

5 4.4 \$ 36,428.97 shall be distributed to ERC as an Additional Settlement Payment  
6 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
7 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
8 caused by Defendant in this matter. These activities are detailed below and support ERC’s  
9 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
10 supplement products in California. ERC’s activities have had, and will continue to have, a direct  
11 and primary effect within the State of California because California consumers will be benefitted  
12 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements  
13 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
14 the products.

15 Based on a review of past years’ actual budgets, ERC is providing the following list of  
16 activities ERC engages in to protect California consumers through Proposition 65 citizen  
17 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
18 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
19 supplement products that may contain lead and/or cadmium and are sold to California  
20 consumers. This work includes continued monitoring and enforcement of past consent judgments  
21 and settlements to ensure companies are in compliance with their obligations thereunder, with a  
22 specific focus on those judgments and settlements concerning lead and/or cadmium. This work  
23 also includes investigation of new companies that ERC does not obtain any recovery through  
24 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-25%): maintaining  
25 ERC’s Voluntary Compliance Program by acquiring products from companies, developing and  
26 maintaining a case file, testing products from these companies, providing the test results and  
27 supporting documentation to the companies, and offering guidance in warning or implementing a  
28 self-testing program for lead and/or cadmium in dietary supplement products; and (3) “GOT



1 LEAD” PROGRAM (up to 5%): maintaining ERC’s “Got Lead?” Program which reduces the  
2 numbers of contaminated products that reach California consumers by providing access to free  
3 testing for lead in dietary supplement products (Products submitted to the program are screened  
4 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
5 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
6 that submitted the product).

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

12 **4.5** \$10,045.00 shall be distributed to William F. Wraith as reimbursement of ERC’s  
13 attorney’s fees, while \$25,516.18 shall be distributed to ERC for its in-house legal fees. Except  
14 as explicitly provided herein, each Party shall bear its own fees and costs.

15 **4.6** In the event that PROGENEX fails to remit the Total Settlement Payment owed  
16 under Section 4 of this Consent Judgment on or before the Due Date, PROGENEX shall be  
17 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
18 provide written notice of the delinquency to PROGENEX via electronic mail. If PROGENEX  
19 fails to deliver the Total Settlement Payment within ten (10) days from the written notice, the  
20 Total Settlement Payment shall accrue interest at the statutory judgment interest rate provided  
21 in the Code of Civil Procedure section 685.010. Additionally, PROGENEX agrees to pay  
22 ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment due under this  
23 Consent Judgment.

## 24 **5. MODIFICATION OF CONSENT JUDGMENT**

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

1           **5.2**     If PROGENEX seeks to modify this Consent Judgment under Section 5.1, then  
2 PROGENEX must provide written notice to ERC of its intent (“Notice of Intent”). If ERC  
3 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
4 must provide written notice to PROGENEX within thirty (30) days of receiving the Notice of  
5 Intent. If ERC notifies PROGENEX in a timely manner of ERC’s intent to meet and confer,  
6 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
7 shall meet in person or via telephone within thirty (30) days of ERC’s notification of its intent  
8 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
9 modification, ERC shall provide to PROGENEX a written basis for its position. The Parties  
10 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
11 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
12 deadlines for the meet-and-confer period.

13           **5.3**     In the event that PROGENEX initiates or otherwise requests a modification  
14 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
15 Consent Judgment, PROGENEX shall reimburse ERC its costs and reasonable attorney’s fees  
16 for the time spent in the meet-and-confer process and filing and arguing the motion or  
17 application.

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

25     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
26     **JUDGMENT**

27           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
28 this Consent Judgment.

1           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Reformulated  
2 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
3 inform PROGENEX in a reasonably prompt manner of its test results, including information  
4 sufficient to permit PROGENEX to identify the Covered Products at issue. PROGENEX shall,  
5 within thirty (30) days following such notice, provide ERC with testing information, from an  
6 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
7 demonstrating PROGENEX's compliance with the Consent Judgment, if warranted. The  
8 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

9           **7.     APPLICATION OF CONSENT JUDGMENT**

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

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

17           **8.1**           This Consent Judgment is a full, final, and binding resolution between ERC,  
18 on behalf of itself and in the public interest, and PROGENEX, of any alleged violation of  
19 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of  
20 exposure to lead from the handling, use, or consumption of the Covered Products and fully  
21 resolves all claims that have been or could have been asserted in this action up to and including  
22 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.  
23 ERC, on behalf of itself and in the public interest, hereby discharges PROGENEX and its  
24 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
25 divisions, affiliates under common ownership, suppliers, franchisees, licensees, customers (not  
26 including private label customers of PROGENEX), distributors, wholesalers, retailers, and all  
27 other upstream and downstream entities in the distribution chain of any Covered Product, and  
28 the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

1 ERC hereby fully releases and discharges the Released Parties from any and all claims, actions,  
2 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
3 asserted, or that could have been asserted as to any alleged violation of Proposition 65 or its  
4 implementing regulations from the handling, use, or consumption of the Covered Products,  
5 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
6 lead and/or cadmium up to and including the Effective Date.

7           **8.2**           ERC on its own behalf only, and PROGENEX on its own behalf only,  
8 further waive and release any and all claims they may have against each other for all actions or  
9 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
10 65 in connection with the Notices and Complaint up through and including the Effective Date,  
11 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
12 enforce the terms of this Consent Judgment.

13           **8.3**           It is possible that other claims not known to the Parties, arising out of the facts  
14 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
15 discovered. ERC on behalf of itself only, and PROGENEX on behalf of itself only,  
16 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
17 claims up through and including the Effective Date, including all rights of action therefore.  
18 ERC and PROGENEX acknowledge that the claims released in Sections 8.1 and 8.2 above may  
19 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
20 such unknown claims. California Civil Code section 1542 reads as follows:

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

26 ERC on behalf of itself only, and PROGENEX on behalf of itself only, acknowledge and  
27 understand the significance and consequences of this specific waiver of California Civil Code  
28 section 1542.

1           **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
3 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

4           **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65, nor shall it apply to any of  
6 PROGENEX's products other than the Covered Products.

7           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10          **10. GOVERNING LAW**

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

13          **11. PROVISION OF NOTICE**

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

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

18 Chris Heptinstall, Executive Director, Environmental Research Center  
19 3111 Camino Del Rio North, Suite 400  
20 San Diego, CA 92108  
21 Tel: (619) 500-3090  
22 Email: chris\_erc501c3@yahoo.com

23          With a copy to:

24          **WILLIAM F. WRAITH**  
25          **WRAITH LAW**  
26          24422 Avenida de la Carlota, Suite 400  
27          Laguna Hills, CA 92653  
28          Tel: (949) 452-1234  
                Fax: (949) 452-1102

**PROGENEX HOLDINGS, LLC**  
                Matrix Solutions LLC dba Progenex  
                Attn: Legal Department  
                41 East 400 North #236  
                Logan, UT 84321-4020

1  
2 With a copy to:  
3 GRADEN P. JACKSON  
4 STRONG & HANNI, P.C.  
5 9350 South 150 East, Suite 820  
6 Sandy, UT 84070  
7 Telephone: (801) 532-7080  
8 Facsimile: (801) 596-1508

9  
10  
11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall file a  
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
19 void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

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

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

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

11     **16. ENTIRE AGREEMENT, AUTHORIZATION**

12             **16.1** This Consent Judgment contains the sole and entire agreement and  
13 understanding of the Parties with respect to the entire subject matter herein, and any and all  
14 prior discussions, negotiations, commitments, and understandings related hereto. No  
15 representations, oral or otherwise, express or implied, other than those contained herein have  
16 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
17 herein, shall be deemed to exist or to bind any Party.

18             **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

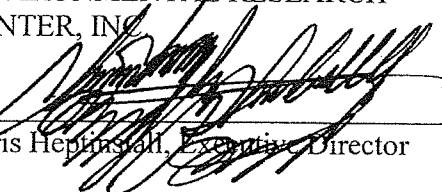
28             (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 **IT IS SO STIPULATED:**

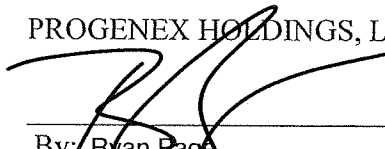
3 Dated: 12/31, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Hepinstall, Executive Director

7 Dated: 12/31, 2016

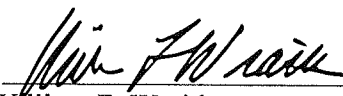
PROGENEX HOLDINGS, LLC

By:   
Its: Manager

11 **APPROVED AS TO FORM:**

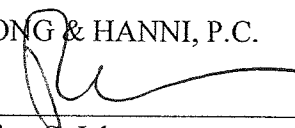
12 Dated: December 31, 2016

WRAITH LAW

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

17 Dated: 12/31, 2016

STRONG & HANNI, P.C.

By:   
Brian C. Johnson  
Attorney for Defendant Progenex  
Holdings, LLC

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

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

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



# **EXHIBIT “A”**

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

April 29, 2016

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

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

**Progenex Holdings, LLC**

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

**Progenex Recovery Belgian Chocolate - Lead**  
**Progenex Recovery Chocolate Peanut Butter Smash - Lead**  
**Progenex Recovery Strawberry Crème - Lead**  
**Progenex Recovery Loco Mocha - Lead**

**Progenex More Muscle Belgian Chocolate - Lead**  
**Progenex More Muscle Strawberry Crème - Lead**  
**Progenex More Muscle Loco Mocha - Lead**  
**Progenex The Bar Toasted Coconut Almond - Lead**  
**Progenex The Bar Peanut Butter Caramel Crunch - Lead**  
**Progenex Cocoon Silk Chocolate - Lead**  
**Progenex Cocoon Cinnamon Slumber - Lead**  
**Progenex Build Ignition Blend - Lead**  
**Progenex Recovery Tropical Vanilla - Lead**  
**Progenex More Muscle Cookies & Cream - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 29, 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.

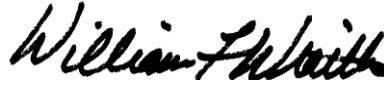
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified 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.

April 29, 2016

Page 3

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "William F. Wraith". The signature is written in a cursive, slightly slanted style.

---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Progenex Holdings, LLC and its Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

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

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: April 29, 2016



---

William F. Wraith

**CERTIFICATE OF SERVICE**

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

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

On April 29, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Progenex Holdings, LLC  
41 East 400 North, #226  
Logan, UT 84321

Dwight Beckstrand  
(Registered Agent for Progenex Holdings,  
LLC)  
Post Office Box 188  
Kanosh, UT 84637

Current President or CEO  
Progenex Holdings, LLC  
925 West 100 North, Suite E  
North Salt Lake, UT 84054

Corporate Direct, Inc.  
(Registered Agent for Progenex Holdings,  
LLC)  
Post Office Box 2869  
Jackson, WY 83001

Current President or CEO  
Progenex Holdings, LLC  
Post Office Box 2869  
Jackson, WY 83001

Current President or CEO  
Progenex Holdings, LLC  
Post Office Box 188  
Kanosh, UT 84637

On April 29, 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 April 29, 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:

April 29, 2016

Page 6

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

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

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

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

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

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

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

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

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

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

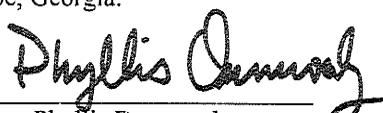
Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

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 April 29, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on April 29, 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  
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 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



# **EXHIBIT “B”**

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

July 20, 2016

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

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

**Progenex Holdings, LLC, individually and doing business as Progenex**

**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:

**Progenex More Muscle Chocolate Peanut Butter Smash – Lead, Cadmium  
Progenex Flow Island Punch - 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.

July 20, 2016

Page 2

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 July 20, 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 Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Progenex Holdings, LLC, individually and doing business as Progenex and its Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Progenex Holdings, LLC, individually and doing business as Progenex**

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: July 20, 2016



---

William F. Wraith

**CERTIFICATE OF SERVICE**

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

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

On July 20, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Progenex Holdings, LLC,  
individually and doing  
business as Progenex  
41 East 400 North, #226  
Logan, UT 84321

Current President or CEO  
Progenex Holdings, LLC,  
individually and doing  
business as Progenex  
40 West 1250 North 4C  
Logan, UT 84321

Current President or CEO  
Progenex Holdings, LLC,  
individually and doing  
business as Progenex  
925 West 100 North, Suite E  
North Salt Lake, UT 84054

Dwight Beckstrand  
(Registered Agent for Progenex Holdings,  
LLC)  
Post Office Box 188  
Kanosh, UT 84637

Current President or CEO  
Progenex Holdings, LLC,  
individually and doing  
business as Progenex  
Post Office Box 2869  
Jackson, WY 83001

Corporate Direct, Inc.  
(Registered Agent for Progenex Holdings,  
LLC)  
Post Office Box 2869  
Jackson, WY 83001

Current President or CEO  
Progenex Holdings, LLC,  
individually and doing  
business as Progenex  
Post Office Box 188  
Kanosh, UT 84637

Luke Adams  
(Registered Agent for Progenex)  
40 West 1250 North #4C  
Logan, UT 84321

On July 20, 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 July 20, 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:

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

July 20, 2016

Page 5

Stacey Grassini, Deputy District Attorney  
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Prop65@rivcoda.org

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Tori Verber Salazar, District Attorney  
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Stephan R. Passalacqua, District Attorney  
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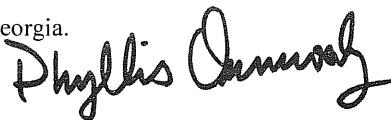
Phillip J. Cline, District Attorney  
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Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
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daspecialops@ventura.org

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

On July 20, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on July 20, 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  
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District Attorney, Amador County  
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District Attorney, Butte County  
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San Andreas, CA 95249

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1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's Office  
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