

1 RICHARD M. FRANCO (CBN 170970)
2 LAW OFFICE OF RICHARD M. FRANCO
3 6500 Estates Drive
4 Oakland, CA 94611
5 Ph: 510-684-1022
6 Email: rick@rfrancolaw.com

7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 SARAH ESMAILI (CBN 206053)
10 ARNOLD & PORTER KAYE SCHOLER LLP
11 Three Embarcadero Center, 10th Floor
12 San Francisco, CA 94111
13 Ph: 415-471-3283
14 Email: sarah.esmaili@apks.com

15 Attorney for Defendant
16 WOODBOLT DISTRIBUTION, LLC, individually
17 and doing business as NUTRABOLT

18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

WOODBOLT DISTRIBUTION, LLC,
individually and doing business as
NUTRABOLT, a Delaware limited liability
company,

Defendant.

CASE NO. RG18907516

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 5, 2018

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On June 5, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
4 Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of
5 California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against WOODBOLT
6 DISTRIBUTION, LLC, individually and doing business as NUTRABOLT (“NUTRABOLT”). In
7 this action, ERC alleges that a number of products manufactured, distributed, or sold by
8 NUTRABOLT contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens
9 and reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
10 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
11 collectively as “Covered Products”) are:

- 12 • **Royal Sport LTD. Charge BCAA - SAA Strawberry Kiwi (lead)**
- 13 • **Royal Sport LTD. Royal Sport Target Weight Loss (lead)**
- 14 • **Cellucor Whey Cor-Performance Whey Chocolate Chip Cookie Dough (lead)**
- 15 • **Cellucor Whey Cor-Performance Whey Cookies N' Cream (lead)**
- 16 • **Cellucor Casein Cor-Performance Casein Chocolate (lead)**
- 17 • **Cellucor Whey Cor-Performance Whey Molten Chocolate (lead)**
- 18 • **Cellucor Whey Cor-Performance Whey Strawberry Milkshake (lead)**
- 19 • **Cellucor Gainer Cor-Performance Gainer Strawberry (lead)**
- 20 • **Cellucor Gainer Cor-Performance Gainer Chocolate (lead, cadmium)**
- 21 • **Cellucor Gainer Cor-Performance Gainer Vanilla (lead)**

22 A Covered Product for which only lead is identified in the Notice is not required to comply with
23 any injunctive terms relating to cadmium in Section 3. A Covered Product for which only cadmium
24 is identified in the Notice is not required to comply with any injunctive terms relating to lead in
25 Section 3. This section in no way diminishes NUTRABOLT’s requirement to comply with
26 Proposition 65.

27 **1.2** Covered Products shall include those products with minor variations in formulation
28 so long as they have the same internal UPC codes as the Covered Products. NUTRABOLT shall

1 not change the internal UPC Codes for the Covered Products during the term of this Agreement, but
2 NUTRABOLT may terminate any given UPC Code if it elects to terminate a Covered Product.

3 **1.3** ERC and NUTRABOLT are hereinafter referred to individually as a “Party” or
4 collectively as the “Parties.”

5 **1.4** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
6 causes, helping safeguard the public from health hazards by reducing the use and misuse of
7 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and
8 encouraging corporate responsibility.

9 **1.5** For purposes of this Consent Judgment, the Parties agree that each defendant is a
10 business entity each of which has employed ten or more persons at all times relevant to this action,
11 and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
12 NUTRABOLT manufactures, distributes, and/or sells the Covered Products.

13 **1.6** The Complaint is based on allegations contained in ERC’s Notice of Violation dated
14 January 23, 2018 that was served on the California Attorney General, other public enforcers, and
15 NUTRABOLT (“Notice”). A true and correct copy of the 60-Day Notice dated January 23, 2018 is
16 attached hereto as Exhibit A and incorporated herein by reference. More than 60 days have passed
17 since the Notice was served on the Attorney General, public enforcers, and NUTRABOLT and no
18 designated governmental entity has filed a complaint against NUTRABOLT with regard to the
19 Covered Products or the alleged violations.

20 **1.7** ERC’s Notice and Complaint allege that use of the Covered Products exposes
21 persons in California to lead and/or cadmium without first providing clear and reasonable warnings
22 in violation of California Health and Safety Code section 25249.6. NUTRABOLT denies all
23 material allegations contained in the Notice and Complaint and denies that the Covered Products
24 require warnings under Proposition 65.

25 **1.8** The Parties have entered into this Consent Judgment in order to settle, compromise,
26 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
27 Judgment nor compliance with this Consent Judgment shall constitute or be construed as an
28 admission by the Parties of any fact, issue of law, or violation of law including but not limited to

1 Proposition 65. Nothing in this Consent Judgment or any document referred to shall be construed
2 as giving rise to any presumption or inference of admission or concession by the Parties as to any
3 fault, wrongdoing or liability. This Section 1.8 shall not diminish or otherwise affect the
4 obligations, responsibilities, and duties of the Parties under this Consent Judgment.

5 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
6 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
7 other or future legal proceeding unrelated to these proceedings.

8 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as a
9 Judgment by this Court.

10 **2. JURISDICTION AND VENUE**

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

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

19 **3.1** Beginning on the Effective Date, any Covered Product that NUTRABOLT
20 manufactures for sale in the State of California, "Distributes into the State of California" or directly
21 sells in the State of California shall either qualify as a Reformulated Covered Product under Section
22 3.3 or comply with the warning requirements of Section 3.2.

23 **3.1.1** As used in this Consent Judgment, the term "Distributes into the State of
24 California" shall mean to directly ship a Covered Product into California for sale in California or to
25 sell a Covered Product to a distributor that NUTRABOLT knows will sell the Covered Product in
26 California.

27 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level"
28 shall be measured in micrograms, and shall be calculated using the following formula: micrograms

1 of lead per gram of product, multiplied by grams of product per serving of the product (using the
2 largest serving size appearing on the product label), multiplied by servings of the product per day
3 (using the largest number of recommended daily servings appearing on the label), which equals
4 micrograms of lead exposure per day. If the label contains no recommended daily servings, then
5 the number of recommended daily servings shall be one.

6 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
7 Level” shall be measured in micrograms, and shall be calculated using the following formula:
8 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
9 product (using the largest serving size appearing on the product label), multiplied by servings of the
10 product per day (using the largest number of recommended daily servings appearing on the label),
11 which equals micrograms of cadmium exposure per day. If the label contains no recommended
12 daily servings, then the number of recommended daily servings shall be one.


13 **3.2 Clear and Reasonable Warnings**

14 **3.2.1** If NUTRABOLT is required to provide a warning pursuant to Section 3, one
15 of the following two warning statements shall be utilized (the “Warning”).

16 Option 1:

17 **WARNING:** Consuming this product can expose you to chemicals including
18 lead [and cadmium], which is [are] known to the State of California to cause
19 [cancer and] birth defects or other reproductive harm. For more information, go
20 to www.P65Warnings.ca.gov/food

20 Option 2:

21  **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov.

22 **3.2.2** NUTRABOLT shall use the phrase “cancer and” in the Warning for a
23 Covered Product if the Daily Lead Exposure Level for that Covered Product is greater than 15
24 micrograms of lead as determined pursuant to the testing requirements of Section 3.4. The Warning
25 set forth under Option 1 shall appropriately reflect whether there is lead, cadmium, or both
26 chemicals present in each of the Covered Products. The Warning shall be securely affixed to or
27 printed upon the container or label of each Covered Product. For both Options 1 and 2, if the
28 Warning is provided on the label, it must be set off from other surrounding information and

1 enclosed in a box. The Warning shall be at least the same size as the largest of any other health or
2 safety warnings appearing on the label or container of the Covered Product packaging, but in no
3 case shall the Warning appear in a type size smaller than 6-point type, and the word “WARNING”
4 shall be in all capital letters and in bold print. No other statements discussing Proposition 65, lead,
5 or cadmium that contradict or conflict with the Warning shall accompany the Warning, whether on
6 the container or label or on NUTRABOLT’s website if the product is offered on that website for
7 purchase by consumers. For the Warning set forth under Option 2, the pictogram shall be in yellow
8 with a black exclamation mark; provided however, the pictogram may be in white instead of yellow
9 if the Covered Product label does not contain the color yellow. The pictogram shall be placed to the
10 left of the text of the Warning, in a size no smaller than the height of the word “WARNING.” In
11 addition, for any Covered Product sold over the internet to a California shipping address, the
12 Warning shall be provided in a manner that complies with 27 Cal. Code Regs. § 25602(b) (2018).

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

17 **3.3 Reformulated Covered Products**

18 **3.3.1** A Reformulated Covered Product is a Covered Product for which the Daily
19 Lead Exposure Level does not exceed 0.5 micrograms (“mcg”) of lead per day after subtracting the
20 amount of lead deemed to be “naturally occurring” for each ingredient listed in Table 3.3.3,
21 pursuant to the method outlined below, for Covered Products that contain lead, and as determined
22 under the testing and quality control methodology of Section 3.4. Additionally, a Reformulated
23 Covered Product is a Covered Product for which the Daily Cadmium Exposure Level does not
24 exceed 4.1 mcg of cadmium per day, for Covered Products that contain cadmium, as determined
25 under the testing and quality control methodology of Section 3.4.

26 **3.3.2** The amount of lead deemed “naturally occurring” in each of the
27 Reformulated Covered Products is the sum of the amounts of “naturally occurring” lead supplied by
28 the quantity of each ingredient listed in Table 3.3.3 that is present in each Reformulated Covered

1 Product. For each ingredient listed in Table 3.3.3, the amount of lead deemed “naturally occurring”
2 is listed in Table 3.3.3 in micrograms of “naturally occurring” lead per gram of the ingredient that is
3 contained in the Reformulated Covered Product.

4 To subtract the “naturally occurring” lead in any Covered Product for purposes of
5 determining the Daily Lead Exposure Level and whether the Covered Product qualifies as a
6 Reformulated Covered Product under this Consent Judgment, as provided in Section 3.3.1,
7 NUTRABOLT shall provide to ERC, within thirty (30) days after the first anniversary of the
8 Effective Date, the documentation required under Section 3.3.3(a)-(c). No deduction for “naturally
9 occurring” lead shall be permitted until after NUTRABOLT provides to ERC the documentation
10 required under Section 3.3.3(a)-(c) as indicated in the preceding sentence. Thereafter, for three (3)
11 additional consecutive anniversaries after the Effective Date, if NUTRABOLT deducts “naturally
12 occurring” lead in calculating the Daily Lead Exposure Level, NUTRABOLT shall provide to ERC,
13 within thirty (30) days after each such anniversary date, the documentation required under Section
14 3.3.3(a)-(c) for each such applicable twelve-month period preceding the applicable anniversary of
15 the Effective Date.

16 **3.3.3** In calculating the Daily Lead Exposure Level to determine whether a
17 Covered Product qualifies as a Reformulated Covered Product, NUTRABOLT shall be allowed to
18 deduct the amount of lead which is deemed to be “naturally occurring” in any ingredient listed in
19 Table 3.3.3 (“Lead Ingredient”) that is contained in that Covered Product under the following
20 conditions: (a) NUTRABOLT itself or from its Lead Ingredient supplier shall obtain either (i) a
21 valid test result showing lead is present in the Lead Ingredient at a specific concentration or in a
22 range; or (ii) a certificate of analysis or certificate of compliance that shows lead is present in the
23 Lead Ingredient at a specific concentration or in a range; and (b) NUTRABOLT shall obtain the
24 documentation in Section 3.3.3(a) (i) or (ii) for each lot of that Lead Ingredient that is delivered to
25 NUTRABOLT (or its manufacturer if NUTRABOLT does not manufacture the Covered Product)
26 within twelve (12) months after the Effective Date (or its anniversary date as applicable) for
27 incorporation into the Covered Product; and (c) NUTRABOLT shall document the total amount (in
28 grams) of each Lead Ingredient contained in the Covered Product. If the documentation obtained

pursuant to Section 3.3.3(a) and (b) documents the presence of lead in any Lead Ingredient in **Table 3.3.3**, NUTRABOLT shall be entitled to deduct the amount of the “naturally occurring” lead for that Lead Ingredient, as listed in **Table 3.3.3**. If the Covered Product does not contain a Lead Ingredient listed in **Table 3.3.3**, NUTRABOLT shall not be entitled to a deduction for “naturally occurring” lead in **Table 3.3.3** for that Covered Product.

Table 3.3.3

Ingredient	Amount of lead (Pb) per gram of ingredient deemed naturally occurring
Calcium (elemental)	0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of magnesium hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	1.1 mcg Pb per gram of potassium chloride
Cocoa powder	1.0 mcg Pb per gram of cocoa powder

3.4 Testing and Quality Control Methodology

3.4.1 Prior to NUTRABOLT’s first distribution or sale of Covered Products manufactured after the Effective Date, and at least once a year for a minimum of three consecutive years, NUTRABOLT shall arrange for lead and cadmium testing of five randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which NUTRABOLT intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, NUTRABOLT changes ingredient suppliers for any of the Covered Products and/or changes the formulation of any of the Covered Products with respect to (a) any ingredient listed in Table 3.3.3 and/or (b) any ingredient

1 that contributes more than 0.1 mcg/day of lead or 0.4 mcg/day of cadmium in the finished product
2 (as calculated by the formulas set forth in Sections 3.1.2 and 3.1.3), then NUTRABOLT shall test
3 that Covered Product annually for at least four (4) consecutive years after such change is made;
4 provided, however, this shall not be construed to add, change or increase any “naturally occurring”
5 allowance as provided in Section 3.3.

6 **3.4.2** For purposes of measuring the Daily Lead Exposure Level and/or Daily
7 Cadmium Exposure Level to determine whether a Covered Product qualifies as a Reformulated
8 Covered Product, the arithmetic mean of the five (5) randomly selected samples of the Covered
9 Products will be controlling.

10 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
11 laboratory method that complies with the performance and quality control factors appropriate for
12 the method used, including limit of detection, qualification, accuracy, and precision that meets the
13 following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) achieving a limit of
14 quantification of less than or equal to 0.010 mg/kg.

15 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
16 independent third party laboratory certified by the California Environmental Laboratory
17 Accreditation Program or an independent third-party laboratory that is registered with the United
18 States Food & Drug Administration.

19 **3.4.5** Nothing in this Consent Judgment shall limit NUTRABOLT’s ability to
20 conduct, or require that others conduct, additional testing of the Covered Products, including the
21 raw materials used in their manufacture.

22 **3.4.6** Within thirty (30) days of ERC’s written request, NUTRABOLT shall deliver
23 lab reports obtained pursuant to Section 3.4 to ERC. NUTRABOLT shall retain all test results and
24 documentation for a period of five years from the date of each test.

25 **4. SETTLEMENT PAYMENT**

26 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
27 attorney’s fees, and costs, NUTRABOLT shall make a total payment of \$65,000.00 (“Total
28 Settlement Amount”) to ERC within seven (7) business days of the Effective Date (“Due Date”).

1 NUTRABOLT shall make this payment by wire transfer to ERC's account, for which ERC will
2 give NUTRABOLT the necessary account information. The Total Settlement Amount shall be
3 apportioned as follows:

4 **4.2** \$11,211.37 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$8,408.52) of the civil penalty to the
6 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking
7 Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section
8 25249.12(c). ERC will retain the remaining 25% (\$2,802.85) of the civil penalty.

9 **4.3** \$12,033.95 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 **4.4** \$13,050.00 shall be distributed to the Law Office of Richard M. Franco as
12 reimbursement of ERC's attorney's fees, while \$28,704.68 shall be distributed to ERC for its in-
13 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

14 **4.5** In the event that NUTRABOLT fails to remit the Total Settlement Amount owed
15 under Section 4 of this Consent Judgment on or before the Due Date, NUTRABOLT shall be
16 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide
17 written notice of the delinquency to NUTRABOLT via electronic mail. If NUTRABOLT fails to
18 deliver the Total Settlement Amount within five (5) days from the written notice, the Total
19 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the
20 California Code of Civil Procedure section 685.010. Additionally, NUTRABOLT agrees to pay
21 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this
22 Consent Judgment.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
25 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by
26 motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a modified
27 consent judgment.
28

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

12 **5.3** In the event that NUTRABOLT initiates or otherwise requests a modification under
13 Section 5.1, and the meet and confer process leads to a joint motion or application for a
14 modification of the Consent Judgment, NUTRABOLT shall reimburse ERC its costs and
15 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and arguing
16 the motion or application.

17 **5.4** Where the meet-and-confer process does not lead to a joint motion or application in
18 support of a modification of the Consent Judgment, then either Party may seek judicial relief on its
19 own. In any such contested court proceeding, ERC may seek costs and any attorney’s fees incurred
20 in opposing the motion pursuant to California Code of Civil Procedure section 1021.5.

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

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

24 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered
25 Product (for which ERC alleges that no Warning has been provided), then ERC shall inform
26 NUTRABOLT in a reasonably prompt manner of its test results, including information sufficient to
27 permit NUTRABOLT to identify the Covered Products at issue. NUTRABOLT shall, within thirty
28 (30) days following such notice, provide ERC with testing information, from an independent third-

1 party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating
2 NUTRABOLT's compliance with the Consent Judgment, if warranted. The Parties shall first
3 attempt to resolve the matter prior to ERC taking any further legal action.

4 **7. APPLICATION OF CONSENT JUDGMENT**

5 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
6 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
7 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
8 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
9 application to any Covered Product which is distributed or sold exclusively outside the State of
10 California and which is not used by 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 NUTRABOLT, of any alleged violation of Proposition
14 65 for failure to provide Proposition 65 warnings of exposure to lead and/or cadmium from the
15 handling, use or consumption of the Covered Products up through and including the Effective Date.
16 ERC, on behalf of itself and its respective owners, principals, shareholders, officers, directors,
17 employees, agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively
18 referred to as "ERC Releasers"), and in the public interest, fully releases and discharges (i)
19 NUTRABOLT and its parent companies, affiliates under common ownership, subsidiaries,
20 shareholders, directors, members, managers, officers, owners, and employees (collectively referred
21 to as "Nutrabort Releasers") and (ii) NUTRABOLT's customers (not including private label
22 customers of NUTRABOLT), distributors, wholesalers, retailers, and all other upstream and
23 downstream entities in the distribution chain of any Covered Product, and (iii) the predecessors,
24 successors, and assigns of any of them (the entities referred to in subsections (i) through (iii) are
25 referred to as "Releasees") from all claims, actions, suits, demands, liabilities, damages, penalties,
26 fees, costs, and expenses (collectively referred to as "Claims") that were asserted, or that could have
27 been asserted, for any alleged violation of Proposition 65 or its implementing regulations arising
28

1 from alleged exposures to lead and/or cadmium in the Covered Products manufactured, distributed,
2 or sold by NUTRABOLT before the Effective Date.

3 **8.2** ERC, on behalf of itself and the ERC Releasors, and not on behalf of the general
4 public, hereby releases and discharges the Releasees from any and all Claims that were asserted, or
5 that could have been asserted, for any alleged violations of any other statutory or common law
6 arising from alleged exposures to lead and/or cadmium in the Covered Products manufactured,
7 distributed, or sold by NUTRABOLT before the Effective Date.

8 **8.3** ERC on behalf of itself and the ERC Releasors, on the one hand, and NUTRABOLT
9 on behalf of itself and the Nutrabolt Releasors, on the other hand, waive and release any and all
10 Claims they may have against each other for all actions or statements made or undertaken in the
11 course of seeking or opposing enforcement of Proposition 65 in connection with the Notice and
12 Complaint up through and including the Effective Date. However, nothing in Section 8 shall affect
13 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

14 **8.4** It is possible that other claims not known to the Parties arising out of the facts
15 alleged in the Notice and Complaint, and relating to the Covered Products will develop or be
16 discovered. ERC on behalf of itself and the ERC Releasors, on the one hand, and NUTRABOLT,
17 on behalf of itself and the Nutrabolt Releasors, on the other hand, acknowledge that this Consent
18 Judgment is expressly intended to cover and include all such claims up through and including the
19 Effective Date, including all rights of action therefore, and further acknowledge that the claims
20 released in Section 8 may include unknown claims, and nevertheless waive California Civil Code
21 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

25 ERC on behalf of itself only, on the one hand, and NUTRABOLT, on the other hand, acknowledge
26 and understand the significance and consequences of this specific waiver of California Civil Code
27 section 1542.

1 **8.5** Nothing in this Release is intended to apply to any occupational or environmental
2 exposures arising under Proposition 65. Compliance with the terms of this Consent Judgment shall
3 be deemed to constitute compliance by any Releasee with Proposition 65 regarding alleged
4 consumer exposures to lead and/or cadmium in the Covered Products as set forth in the Notice and
5 Complaint.

6 **8.6** Nothing in this Consent Judgment is intended to apply to any of NUTRABOLT's
7 products other than the Covered Products.

8 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

11 **10. GOVERNING LAW**

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

14 **11. PROVISION OF NOTICE**

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

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

19 Chris Heptinstall, Executive Director, Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108
Ph: (619) 500-3090
Email: chris_erc501c3@yahoo.com

22 With a copy to:
23 RICHARD M. FRANCO
LAW OFFICE OF RICHARD M. FRANCO
24 6500 Estates Drive
Oakland, CA 94611
25 Ph: (510) 684-1022
Email: rick@rfrancolaw.com

1 **FOR WOODBOLT DISTRIBUTION, LLC, individually and doing business as NUTRABOLT:**

2 MICHAEL J. DIMAGGIO
3 WOODBOLT DISTRIBUTION, LLC d/b/a NUTRABOLT
4 3891 S. Traditions Drive
5 Bryan, Texas 77807
6 Ph: (979) 773-8937
7 Email: mdimaggio@nutrabolt.com

8 With a copy to:
9 SARAH ESMAILI
10 ARNOLD & PORTER KAYE SCHOLER LLP
11 Three Embarcadero Center, 10th Floor
12 San Francisco, CA 94111
13 Ph: (415) 471-3283
14 Email: sarah.esmaili@apks.com

15 **12. COURT APPROVAL**

16 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion
17 for Court Approval. The Parties shall use their best efforts to support entry of this Consent
18 Judgment.

19 **12.2** If the California Attorney General objects to any term in this Consent Judgment, the
20 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
21 the hearing on the motion.

22 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be void and
23 have no force or effect.

24 **13. EXECUTION AND COUNTERPARTS**

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

28 **14. DRAFTING**

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

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

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

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

9 **16. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda County,
11 enforce the terms and conditions contained in this Consent Judgment. In any action brought by
12 ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies
13 as are provided by law for failure to comply with the Consent Judgment. To the extent the failure to
14 comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC
15 shall not be limited to enforcement of this Consent Judgment, but may seek in another action
16 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with
17 Proposition 65 or other laws.

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

19 **17.1** This Consent Judgment contains the sole and entire agreement and understanding of
20 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
21 negotiations, commitments, and understandings related hereto. No representations, oral or
22 otherwise, express or implied, other than those contained herein have been made by any Party. No
23 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
24 or to bind any Party.

25 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
26 by the Party he or she represents to stipulate to this Consent Judgment.
27
28

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

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

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

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

IT IS SO STIPULATED:


Dated: 10/19/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hoppenstall, Executive Director

Dated: October 19, 2018

WOODBOLT DISTRIBUTION, LLC,
individually and doing business as
NUTRABOLT

By: 
Its: Michael J. DiMaggio, CLO

1 APPROVED AS TO FORM:
2

3 Dated: October 19, 2018
4

LAW OFFICE OF RICHARD M. FRANCO

5 By: 
6

Richard M. Franco

7 Attorney for Plaintiff Environmental
8 Research Center, Inc.

9 Dated: October 19, 2018
10

ARNOLD & PORTER KAYE SCHOLER LLP

11 By: 
12

Sarah Esmaili

13 Attorney for Defendant Woodbolt
14 Distribution, LLC, individually and
15 doing business as Nutrabolt
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2018

Judge of the Superior Court

EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

**6500 ESTATES DRIVE
OAKLAND, CA 94611
510.684.1022
RICK@RFRANCOLAW.COM**

VIA CERTIFIED MAIL

Current President or CEO
Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt
3891 South Traditions Drive
Bryan, TX 77807

Current President or CEO
Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt
720 Brazos Street, Suite 1000
Austin, TX 78701

Doss Cunningham
(Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt's
Registered Agent for Service of Process)
3891 South Traditions Drive
Bryan, TX 77807

Corporation Service Company
(Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt's
Registered Agent for Service of Process)
251 Little Falls Drive
Wilmington, DE 19808

VIA ELECTRONIC MAIL

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

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

VIA ELECTRONIC MAIL

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

Allison Haley, 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

VIA ELECTRONIC MAIL

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th
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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

VIA ELECTRONIC MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

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

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

Woodbolt Distribution, LLC, individually and doing business as Nutrabolt

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Royal Sport LTD. Charge BCAA - SAA Strawberry Kiwi - Lead**
- 2. Royal Sport LTD. Royal Sport Target Weight Loss - Lead**
- 3. Cellucor Whey Cor-Performance Whey Chocolate Chip Cookie Dough - Lead**
- 4. Cellucor Whey Cor-Performance Whey Cookies N' Cream - Lead**
- 5. Cellucor Casein Cor-Performance Casein Chocolate - Lead**
- 6. Cellucor Whey Cor-Performance Whey Molten Chocolate - Lead**
- 7. Cellucor Whey Cor-Performance Whey Strawberry Milkshake - Lead**
- 8. Cellucor Gainer Cor-Performance Gainer Strawberry - Lead**
- 9. Cellucor Gainer Cor-Performance Gainer Chocolate – Lead, Cadmium**
- 10. Cellucor Gainer Cor-Performance Gainer Vanilla - 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.

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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since January 23, 2015, as well as every day since the products were

January 23, 2018

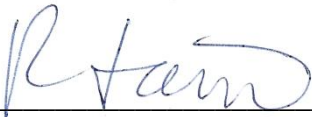
Page 4

introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Woodbolt Distribution, LLC, individually and doing business as Nutrabolt, 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 Woodbolt Distribution, LLC, individually and doing business as Nutrabolt

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-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: January 23, 2018



Rick Franco

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 January 23, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt
3891 South Traditions Drive
Bryan, TX 77807

Doss Cunningham
(Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt’s
Registered Agent for Service of Process)
3891 South Traditions Drive
Bryan, TX 77807

Current President or CEO
Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt
720 Brazos Street, Suite 1000
Austin, TX 78701

Corporation Service Company
(Woodbolt Distribution, LLC, individually
and doing business as Nutrabolt’s
Registered Agent for Service of Process)
251 Little Falls Drive
Wilmington, DE 19808

On January 23, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 January 23, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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

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

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

January 23, 2018

Page 7

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

Allison Haley, 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, 4th 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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

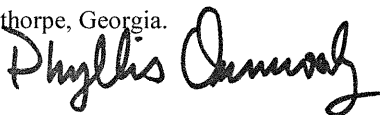
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 January 23, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 23, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

January 23, 2018

Page 8

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 4th Floor
Eureka, CA 95501

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

District Attorney, Inyo
County
P.O. Drawer D
Independence, CA 93526

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
Hall of Justice
211 West Temple St., Ste
1200
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
303 West Third Street
San Bernadino, CA 92415

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, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
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
463 2nd 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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for

² See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.