

1 Michael Freund SBN 99687
Ryan Hoffman SBN 283297
2 Michael Freund & Associates
3 1919 Addison Street, Suite 105
Berkeley, CA 94704
4 Telephone: (510) 540-1992
Facsimile: (510) 540-5543

5
6 Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

7 Ann G. Grimaldi
8 Grimaldi Law Offices
535 Mission Street, 14th Floor
9 San Francisco, CA 94105
10 Telephone: (415) 463-5186
Facsimile: (415) 358-4467

11 Attorneys for Defendant
12 FITPRO USA LLC

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

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

18 **Plaintiff,**
19 **vs.**

20 **FITPRO USA LLC and DOES 1-100**

21 **Defendants.**

CASE NO. RG18902964

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 30, 2018
Trial Date: None set

23 **1. INTRODUCTION**

24 **1.1** On April 30, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
25 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
26 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant
27 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
28

1 65”), against FitPro USA LLC (“FitPro”) and Does 1-100. In this action, ERC alleges that one
2 of the products manufactured, distributed, or sold by FitPro contains lead, a chemical listed
3 under Proposition 65 as a carcinogen and reproductive toxin, and exposes consumers to this
4 chemical at a level requiring a Proposition 65 warning. This product (referred to hereinafter
5 individually as a “Covered Product”) is: (1) FitPro Energy & Performance Range Active Greens
6 Green Apple.

7 1.2 ERC and FitPro are hereinafter referred to individually as a “Party” or
8 collectively as the “Parties.”

9 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
10 causes, helping safeguard the public from health hazards by reducing the use and misuse of
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
12 and encouraging corporate responsibility.

13 1.4 For purposes of this Consent Judgment, FitPro does not dispute that it is a business
14 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a
15 “person in the course of doing business” within the meaning of Proposition 65. FitPro
16 manufactures, distributes, and/or sells the Covered Product.

17 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation
18 dated February 20, 2018 that was served on the California Attorney General, other public
19 enforcers, and FitPro (“Notice”). A true and correct copy of the 60-Day Notice dated February
20 20, 2018 is attached hereto as **Exhibit A** and is incorporated herein by reference. More than 60
21 days have passed since the Notice was served on the Attorney General, public enforcers, and
22 FitPro and no designated governmental entity has filed a complaint against FitPro with regard
23 to the Covered Product or the alleged violations.

24 1.6 ERC’s Notice and Complaint allege that use of the Covered Product exposes
25 persons in California to lead without first providing clear and reasonable warnings in violation
26 of California Health and Safety Code section 25249.6. FitPro denies all material allegations
27 contained in the Notice and Complaint.

28 ///

1 1.7 The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
4 be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
6 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
7 violation of law.

8 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
10 current or future legal proceeding unrelated to these proceedings.

11 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
12 a Judgment by this Court.

13 1.10 FitPro has ceased sales of the Covered Product and shall continue its cessation of
14 sales of the Covered Product.

15 **2. JURISDICTION AND VENUE**

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

23 **3. INJUNCTIVE RELIEF**

24 Beginning on the Effective Date, FitPro shall be permanently enjoined from
25 manufacturing for sale in the State of California, "Distributing into the State of California," or
26 directly selling in the State of California, any Covered Product.

27 **4. SETTLEMENT PAYMENT**

28 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,

1 attorney's fees, and costs, FitPro shall make a total payment of \$29,495.48 ("Total Settlement
2 Amount") to ERC within 5 days of the Effective Date ("Due Date"). FitPro shall make this
3 payment by wire transfer to ERC's account, for which ERC will give FitPro the necessary
4 account information. The Total Settlement Amount shall be apportioned as follows:

5 **4.2** \$1,500.00 shall be considered a civil penalty pursuant to California Health and
6 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$1,125.00) of the civil penalty to the
7 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
9 Code section 25249.12(c). ERC will retain the remaining 25% (\$375.00) of the civil penalty.

10 **4.3** \$2,336.76 shall be distributed to ERC as reimbursement to ERC for reasonable
11 costs incurred in bringing this action.

12 **4.4** \$10,007.50 shall be distributed to Michael Freund as reimbursement of ERC's
13 attorney's fees, \$292.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's
14 attorney's fees, while \$15,358.72 shall be distributed to ERC for its in-house legal fees. Except
15 as explicitly provided herein, each Party shall bear its own fees and costs.

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

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
27 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
28

1 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
2 modified consent judgment.

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

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

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

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

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

1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
6 application to any Covered Product which is distributed or sold exclusively outside the State of
7 California and which is not used by California consumers.

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
10 behalf of itself and in the public interest, and FitPro and its respective officers, directors,
11 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
12 franchisees, licensees, customers (not including private label customers of FitPro), distributors,
13 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
14 of any Covered Product, and the predecessors, successors, and assigns of any of them
15 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby
16 fully releases and discharges the Released Parties from any and all claims, actions, causes of
17 action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that
18 could have been asserted from the handling, use, or consumption of the Covered Product, as to
19 any alleged violation of Proposition 65 or its implementing regulations arising from the failure
20 to provide Proposition 65 warnings on the Covered Product regarding lead up to and including
21 the Effective Date.

22 **8.2** ERC on its own behalf only, and FitPro on its own behalf only, further waive
23 and release any and all claims they may have against each other for all actions or statements
24 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
25 connection with the Notice and Complaint up through and including the Effective Date,
26 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
27 enforce the terms of this Consent Judgment.

28 **8.3** It is possible that other claims not known to the Parties, arising out of the facts

1 alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be
2 discovered. ERC on behalf of itself only, and FitPro on behalf of itself only, acknowledge that
3 this Consent Judgment is expressly intended to cover and include all such claims up through
4 and including the Effective Date, including all rights of action therefore. ERC and FitPro
5 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown
6 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
7 claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and FitPro on behalf of itself only, acknowledge and understand
12 the significance and consequences of this specific waiver of California Civil Code section
13 1542.

14 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
15 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
16 in the Covered Product as set forth in the Notice and Complaint.

17 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
18 environmental exposures arising under Proposition 65, nor shall it apply to any of FitPro's
19 products other than the Covered Product.

20 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

23 **10. GOVERNING LAW**

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

26 **11. PROVISION OF NOTICE**

27 All notices required to be given to either Party to this Consent Judgment by the other shall
28 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via

1 email may also be sent.

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

3 Chris Heptinstall, Executive Director, Environmental Research Center
4 3111 Camino Del Rio North, Suite 400
5 San Diego, CA 92108
6 Ph: (619) 500-3090
7 Email: chris_erc501c3@yahoo.com

8 With a copy to:
9 Michael Freund
10 Ryan Hoffman
11 Michael Freund & Associates
12 1919 Addison Street, Suite 105
13 Berkeley, CA 94704
14 Ph: (510) 540-1992
15 Fax: (510) 540-5543

16 **FITPRO USA LLC**

17 Ann Grimaldi
18 Grimaldi Law Offices
19 535 Mission Street, 14th Floor
20 San Francisco, CA 94105
21 Ph: (415) 463-5186
22 Fax: (415) 358-4467
23 ann.grimaldi@grimaldilawoffices.com

24 **12. COURT APPROVAL**

25 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
26 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
27 Consent Judgment.

28 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
2 as the original signature.

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

18 ERC may, by motion or order to show cause before the Superior Court of Alameda
19 County, enforce the terms and conditions contained in this Consent Judgment. In any action
20 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
21 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
22 To the extent the failure to comply with the Consent Judgment constitutes a violation of
23 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
24 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
25 law for failure to comply with Proposition 65 or other laws.

26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter herein, and any and all

1 prior discussions, negotiations, commitments, and understandings related hereto. No
2 representations, oral or otherwise, express or implied, other than those contained herein have
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
4 herein, shall be deemed to exist or to bind any Party.

5 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

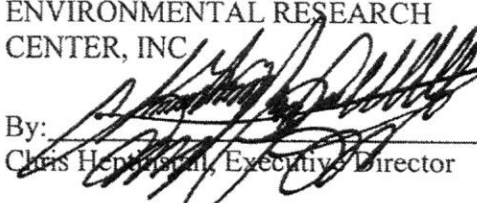
12 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
13 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
14 been diligently prosecuted, and that the public interest is served by such settlement; and

15 (2) Make the findings pursuant to California Health and Safety Code section
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

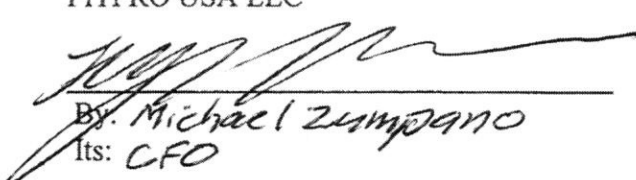
18 Dated: 8/28/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC

19
20 By: 
21 Chris Henthorn, Executive Director

22
23 Dated: 8-30, 2018

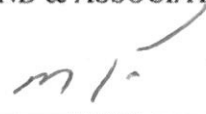
FITPRO USA LLC

24
25 By: 
26 Its: CFO

1 **APPROVED AS TO FORM:**

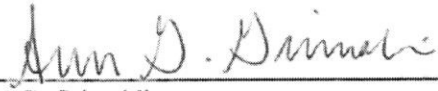
2 Dated: 8/31/, 2018

MICHAEL FREUND & ASSOCIATES

3
4 By: 
5 Michael Freund
6 Ryan Hoffman
7 Attorneys for Plaintiff Environmental
8 Research Center, Inc.

8 Dated: August 31, 2018

GRIMALDI LAW OFFICES

9
10 By: 
11 Ann G. Grimaldi
12 Attorney for Defendant FitPro USA LLC

13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17 Dated: _____, 2018

18 _____
19 Judge of the Superior Court

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27
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EXHIBIT A

Michael Freund & Associates

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

Michael Freund, Esq.

Ryan Hoffman, Esq.

February 20, 2018

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Fitpro USA LLC

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

FitPro Energy & Performance Range Active Greens Green Apple - 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 recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 20, 2015, as well as every day since the product was 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

February 20, 2018

Page 2

either removed from or reduced to allowable levels in the product. 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 ingesting this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

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

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Fitpro USA LLC and its Registered Agent 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 Fitpro USA LLC

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: February 20, 2018



Michael Freund

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 February 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties 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
Fitpro USA LLC
2333 Courage Drive, Suite C
Fairfield, CA 94533

Eric Brucia
(Fitpro USA LLC’s Registered Agent
for Service of Process)
160 Palm Avenue
San Rafael, CA 94901

On February 20, 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 February 20, 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

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

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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

February 20, 2018

Page 5

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

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

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

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 February 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on February 20, 2018, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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

February 20, 2018

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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.