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

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

19 Plaintiff,

20 v.

21 NUTRABIO LABS, INC., a New Jersey
22 corporation, and DOES 1 – 25,

23 Defendants.

CASE NO. RG18911970

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 9, 2018

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On July 9, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
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1 Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the "Complaint")
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 ("Proposition 65"), against NUTRABIO LABS, INC. ("NUTRABIO") and DOES 1-25. In this
4 action, ERC alleges that a number of products manufactured, distributed, or sold by NUTRABIO
5 contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and
6 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
7 65 warning. These products (referred to hereinafter individually as a "Covered Product" or
8 collectively as "Covered Products") are:

- 9 (1) NutraBio 100% Hydrolyzed Whey Protein Dutch Chocolate (lead)
- 10 (2) NutraBio Naturals Organic Plant Protein Chocolate (lead, cadmium)
- 11 (3) NutraBio 100% Micellar Casein Dutch Chocolate (lead)
- 12 (4) NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Chocolate
13 Milkshake (lead)
- 14 (5) NutraBio Naturals Organic Plant Protein Vanilla (lead, cadmium),
- 15 (6) NutraBio Classic Whey Cold Brew Cappuccino (lead)
- 16 (7) NutraBio Muscle Matrix MRP Women's Formula 40:40:20 Meal
17 Replacement Banana Cream (lead)
- 18 (8) NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Banana Cream
19 (lead)
- 20 (9) NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Strawberry
21 Smoothie (lead)
- 22 (10) NutraBio Extreme Mass Advanced Anabolic Mass Gainer Vanilla (lead)
- 23 (11) NutraBio Extreme Mass Advanced Anabolic Mass Gainer Chocolate (lead)
- 24 (12) NutraBio Whole-Grain Ground Flaxseed Meal (cadmium)
- 25 (13) NutraBio Extreme Mass Advanced Anabolic Mass Gainer Wild Strawberry
26 (lead)

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1 **1.2** ERC and NUTRABIO are hereinafter referred to individually as a “Party” or
2 collectively as the “Parties.”

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

7 **1.4** For purposes of this Consent Judgment, the Parties agree that NUTRABIO is a
8 business entity that has employed ten or more persons at all times relevant to this action, and
9 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
10 NUTRABIO manufactures, distributes, and/or sells the Covered Products.

11 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
12 dated April 6, 2018 and April 27, 2018 that were served on the California Attorney General,
13 other public enforcers, and NUTRABIO (“Notices”). A true and correct copy of the 60-Day
14 Notices dated April 6, 2018 and April 27, 2018 are attached hereto as **Exhibits A and B**,
15 respectively, and incorporated herein by reference. More than 60 days have passed since the
16 Notices were served on the Attorney General, public enforcers, and NUTRABIO and no
17 designated governmental entity has filed a complaint against NUTRABIO with regard to the
18 Covered Products or the alleged violations.

19 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
20 persons in California to lead and/or cadmium without first providing clear and reasonable
21 warnings in violation of California Health and Safety Code section 25249.6. NUTRABIO
22 denies all material allegations contained in the Notices and Complaint.

23 **1.7** The Parties have entered into this Consent Judgment in order to settle,
24 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
25 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
26 be construed as an admission by any of the Parties or by any of their respective officers,
27 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
28 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or

1 violation of law at any time, for any purpose. Nothing in this Consent Judgment shall be
2 construed as giving rise to any presumption or inference of admission or concession or waiver of
3 any defense by the Parties as to any fault, wrongdoing or liability, including without limitation,
4 any alleged violation of Proposition 65.

5 **1.8** 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 current or future legal proceeding unrelated to these proceedings.

8 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
9 a 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
14 over NUTRABIO as to the acts alleged in the Complaint, that venue is proper in Alameda County,
15 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
16 all claims up through and including the Effective Date which were or could have been asserted in
17 this action based on the facts alleged in the Notices and Complaint.

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

19 **3.1** Beginning three (3) months after the Effective Date (the “Compliance Date”),
20 NUTRABIO shall be permanently enjoined from manufacturing for sale in the State of
21 California, “Distributing into the State of California,” or directly selling in the State of
22 California, any Covered Products which expose a person to a “Daily Lead Exposure Level” of
23 more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more
24 than 4.1 micrograms of cadmium per day unless it meets the warning requirements under
25 Section 3.2.

26 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
27 of California” shall mean to directly ship a Covered Product into California for sale in
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1 California or to sell a Covered Product to a distributor that NUTRABIO knows or has reason to
2 know will sell the Covered Product in California.

3 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the
6 product (using the largest serving size appearing on the product label), multiplied by servings
7 of the product per day (using the largest number of recommended daily servings appearing on
8 the label), which equals micrograms of lead exposure per day, but excluding lead which is
9 deemed “naturally occurring” for purposes of this Consent Judgment only, pursuant to Section
10 3.1.4. If the label contains no recommended daily servings, then the number of recommended
11 daily servings shall be one.

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

19 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product,
20 NUTRABIO shall be allowed to deduct the amount of lead which is deemed “naturally
21 occurring” in any ingredient listed in **Table 1** that is contained in that Covered Product under the
22 following conditions: For each year that NUTRABIO claims entitlement to a “naturally
23 occurring” allowance, NUTRABIO shall provide ERC with the following information: (a)
24 NUTRABIO must produce to ERC a list of each ingredient in the Covered Product for which a
25 “naturally occurring” allowance is claimed; (b) NUTRABIO must provide ERC with
26 documentation of laboratory testing during the year for which the “naturally occurring”
27 allowance is claimed that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of
28 lead, if any, contained in any ingredient listed in **Table 1** that is contained in the Covered

Product and for which NUTRABIO intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, NUTRABIO shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, NUTRABIO shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that ingredient.

The information required by Sections 3.1.4 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any year that NUTRABIO shall claim entitlement to the “naturally occurring” allowance. ERC shall maintain the confidentiality of the information provided by NUTRABIO pursuant to Sections 3.1.4 (a) and (b) in accordance with the terms of the Confidentiality Agreement entered into between the Parties.

TABLE 1

Ingredient	Naturally Occurring Lead Allowance for Purposes of this Consent Judgment Only
Calcium (elemental)	0.8 micrograms per gram (µg/g)
Ferrous fumarate	0.4 µg/g
Zinc oxide	8.0 µg/g
Magnesium oxide	0.4 µg/g
Magnesium carbonate	0.332 µg/g
Magnesium hydroxide	0.4 µg/g
Zinc gluconate	0.8 µg/g
Potassium chloride	1.1 µg/g
Cocoa powder	1.0 µg/g
Chocolate liquor	1.0 µg/g
Cocoa butter	0.1 µg/g

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1 **3.1 Clear and Reasonable Warnings**

2 **3.2.1** If NUTRABIO is required to provide a warning pursuant to Section 3.1,
3 one of the following warnings must be utilized (“Warning”):

4 **OPTION 1:**

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

7 **OPTION 2:**

8 NUTRABIO may use one of the following short form Warnings, as applicable:

9 ⚠ **WARNING :** Cancer – www.P65Warnings.ca.gov.

10 ⚠ **WARNING :** Reproductive Harm - www.P65Warnings.ca.gov.

11 ⚠ **WARNING :** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

12
13 If NUTRABIO chooses **OPTION 1**, NUTRABIO shall use the phrase “cancer
14 and” in the Warning if NUTRABIO has reason to believe that the the “Daily Lead Exposure
15 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
16 methodology set forth in Section 3.4 or if NUTRABIO has reason to believe that another
17 Proposition 65 chemical is present which may require a cancer warning. As identified in the
18 brackets, the Warning shall appropriately reflect whether there is lead, cadmium, or both
19 chemicals present in each of the Covered Products.

20 **3.2.2** The Warning shall be securely affixed to or printed upon the container or
21 label of each Covered Product. If the Warning is provided on the label, it must be set off from
22 other surrounding information and enclosed in a box. In addition, for any Covered Product sold
23 over the internet, the Warning shall appear on the checkout page when a California delivery
24 address is indicated for any purchase of any Covered Product. An asterisk or other identifying
25 method must be utilized to identify which products on the checkout page are subject to the
26 Warning. In no event shall any internet or website Warning be contained in or made through a
27 link.

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1 The Warning shall be at least the same size as the largest of any other health or safety
2 warnings also appearing on its website or on the label or container of NUTRABIO's product
3 packaging and the word "WARNING" shall be in all capital letters and in bold print. No statements
4 intended to or likely to have the effect of diminishing the impact of the Warning on the average lay
5 person shall accompany the Warning. Further no statements may accompany the Warning that state
6 or imply that the source of the listed chemical has an impact on or results in a less harmful effect of
7 the listed chemical.

8 NUTRABIO must display the Warning with such conspicuousness, as compared
9 with other words, statements or designs on the label or container, or on its website, if applicable,
10 to render the Warning likely to be read and understood by an ordinary individual under customary
11 conditions of purchase or use of the product.

12 **3.3 Reformulated Covered Products**

13 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
14 Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium
15 Exposure Level" is no more than 4.1 micrograms of cadmium per day as determined by the quality
16 control methodology described in Section 3.4.

17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** Beginning within one year of the Effective Date, NUTRABIO shall
19 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
20 minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected
21 samples of each of the Covered Products, in the form intended for sale to the end-user, which
22 NUTRABIO intends to sell or is manufacturing for sale in California, directly selling to a
23 consumer in California or "Distributing into the State of California." If tests conducted
24 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
25 each of three (3) consecutive years, then the testing requirements of this Section will no longer
26 be required as to that Covered Product. However, if, during the three year testing period,
27 NUTRABIO changes ingredient suppliers for any of the Covered Products and/or reformulates
28 any of the Covered Products, NUTRABIO shall test that Covered Product annually for at least

1 three (3) consecutive years after such change is made, but in no event shall NUTRABIO be
2 required to conduct the testing required by this Section 3.4.1 for more than six (6) years after
3 the Effective Date.

4 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
5 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the
6 three (3) randomly selected samples of the Covered Products will be controlling.

7 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg

12 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
13 independent third party laboratory certified by the California Environmental Laboratory
14 Accreditation Program or an independent third-party laboratory that is registered with the
15 United States Food & Drug Administration.

16 **3.4.5** Nothing in this Consent Judgment shall limit NUTRABIO’s ability to
17 conduct, or require that others conduct, additional testing of the Covered Products, including
18 the raw materials used in their manufacture.

19 **3.4.6** Within thirty (30) days of ERC’s written request, NUTRABIO shall
20 deliver lab reports obtained pursuant to Section 3.4 to ERC. NUTRABIO shall retain all test
21 results and documentation for a period of five years from the date of each test.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney’s fees, and costs, NUTRABIO shall make a total payment of \$105,000.00 (“Total
25 Settlement Amount”) in three equal monthly payments, according to the following payment
26 schedule (“Due Dates”):

- 27 • Payment 1 -- \$40,000.00 within 5 days of the Effective Date
- 28 • Payment 2 -- \$40,000.00 within 35 days of the Effective Date

- Payment 3 -- \$25,000.00 within 65 days of the Effective Date

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

4.3 \$10,142.36 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$7,606.77) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$2,535.59) of the civil penalty.

4.4 \$12,183.84 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.5 \$39,440.21 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of ERC's attorney's fees, while \$43,233.59 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

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

5. MODIFICATION OF CONSENT JUDGMENT

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

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

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

15 **5.3** In the event that NUTRABIO initiates or otherwise requests a modification
16 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
17 modification of the Consent Judgment, NUTRABIO shall reimburse ERC its costs and
18 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
19 arguing the 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 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
28 this Consent Judgment.

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

9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

3 **8.2** ERC on its own behalf only, and NUTRABIO on its own behalf only,
4 further waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
6 65 in connection with the Notices and Complaint up through and including the Effective Date,
7 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
8 enforce the terms of this Consent Judgment.

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

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

22 ERC on behalf of itself only, and NUTRABIO on behalf of itself only, acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code
24 section 1542.

25 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
27 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

28 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
environmental exposures arising under Proposition 65, nor shall it apply to any of
NUTRABIO's products other than the Covered Products.

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

4 **10. GOVERNING LAW**

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

7 **11. PROVISION OF NOTICE**

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

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

12 Chris Heptinstall, Executive Director, Environmental Research Center
13 3111 Camino Del Rio North, Suite 400
14 San Diego, CA 92108
15 Tel: (619) 500-3090
16 Email: chris_erc501c3@yahoo.com

17 With a copy to:
18 MATTHEW C. MACLEAR
19 ANTHONY M. BARNES
20 AQUA TERRA AERIS LAW GROUP
21 828 San Pablo Ave, Suite 115B
22 Albany, CA 94706
23 Ph: 415-568-5200
24 Email: mcm@atalawgroup.com

25 **NUTRABIO LABS, INC.**

26 Mark Glazier
27 NutraBio Labs, Inc.
28 564 Lincoln Blvd.
Middlesex, NJ 08846

With a copy to
JASON P. TORTORICI
JOSEPH P. SCHILLECI, JR.
2821 2nd Avenue South, Suite E
Birmingham, Alabama 35233
Telephone: (205) 978-4211

1 Facsimile: (205) 978-4212
2 Email: jpt@schillicitortoricilaw.com
3 Email: jps@schillicitortoricilaw.com

4 **12. COURT APPROVAL**

5 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
6 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
7 Consent Judgment.

8 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
9 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
10 prior to the hearing on the motion.

11 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
12 void and have no force or effect.

13 **13. EXECUTION AND COUNTERPARTS**

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

17 **14. DRAFTING**

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

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

27 If a dispute arises with respect to either Party's compliance with the terms of this Consent
28 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in

1 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
2 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

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4 **16. ENFORCEMENT**

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

13 **17. ENTIRE AGREEMENT, AUTHORIZATION**

14 **17.1** This Consent Judgment contains the sole and entire agreement and
15 understanding of the Parties with respect to the entire subject matter herein, and any and all
16 prior discussions, negotiations, commitments, and understandings related hereto. No
17 representations, oral or otherwise, express or implied, other than those contained herein have
18 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
19 herein, shall be deemed to exist or to bind any Party.

20 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

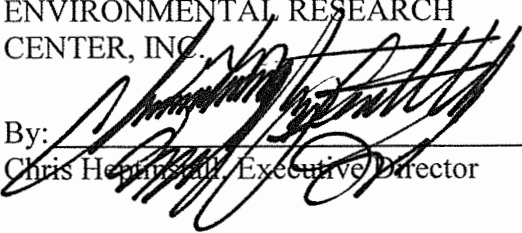
27 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
28 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

5 Dated: 1/28/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.
By: 
Chris Hepburn, Executive Director


9 Dated: _____, 2019

NUTRABIO LABS, INC.

By:
Its:

15 **APPROVED AS TO FORM:**

16 Dated: January 31, 2019

AQUA TERRA AERIS LAW GROUP
By: 
Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

22 Dated: _____, 2019

SCHILLECI & TORTORICI, P.C.
By: _____
Jason P. Tortorici
Joseph P. Schilleci, Jr.
Attorney for Defendant NutraBio Labs,
Inc.

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**


5 Dated: _____, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: _____
Chris Heptinstall, Executive Director

8
9
10 Dated: January 31, 2019


NUTRABIO LABS, INC.

11
12 
13 By: Mark Glazier
Its: President

14
15
16 **APPROVED AS TO FORM:**


17 Dated: January 31, 2019

AQUA TERRA AERIS LAW GROUP

18
19 By: 
20 Matthew C. Maclear
21 Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

22
23 Dated: Jan. 31, 2019

SCHILLECI & TORTORICI, P.C.

24 By: 
25 Jason P. Tortorici
26 Joseph P. Schilleci, Jr.
Attorney for Defendant NutraBio Labs,
27 Inc.
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2019

Judge of the Superior Court

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EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

April 6, 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 products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

NutraBio Labs, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 2

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

1. **NutraBio 100% Hydrolyzed Whey Protein Dutch Chocolate - Lead**
2. **NutraBio Naturals Organic Plant Protein Chocolate – Lead, Cadmium**
3. **NutraBio 100% Micellar Casein Dutch Chocolate - Lead**
4. **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Chocolate Milkshake - Lead**
5. **NutraBio Naturals Organic Plant Protein Vanilla – Lead, Cadmium**
6. **NutraBio Classic Whey Cold Brew Cappuccino - Lead**
7. **NutraBio Muscle Matrix MRP Women's Formula 40:40:20 Meal Replacement Banana Cream - Lead**
8. **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Banana Cream - Lead**
9. **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Strawberry Smoothie - Lead**
10. **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Vanilla - Lead**
11. **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Chocolate - Lead**
12. **NutraBio Whole-Grain Ground Flaxseed Meal - Cadmium**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 6, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 3

and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

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

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraBio Labs, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by NutraBio Labs, Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

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

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

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

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: April 6, 2018

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 5

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 April 6, 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
NutraBio Labs, Inc.
564 Lincoln Boulevard
Middlesex, NJ 08846

Mark Glazier
(Registered Agent for NutraBio Labs, Inc.)
564 Lincoln Boulevard
Middlesex, NJ 08846

On April 6, 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 April 6, 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 Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 6

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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 7

On April 6, 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 April 6, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Phyllis Dunwoody



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

April 6, 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 Bernardino, 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.

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EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

April 27, 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:

NutraBio Labs, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
Page 2

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

NutraBio Extreme Mass Advanced Anabolic Mass Gainer Wild Strawberry - 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 April 27, 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 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.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
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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,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraBio Labs, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by NutraBio Labs, Inc.

I, Matthew Maclear, 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.

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: April 27, 2018

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
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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 April 27, 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
NutraBio Labs, Inc.
564 Lincoln Boulevard
Middlesex, NJ 08846

Mark Glazier
(Registered Agent for NutraBio Labs, Inc.)
564 Lincoln Boulevard
Middlesex, NJ 08846

On April 27, 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 April 27, 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 Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
Page 6

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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
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

Kathryn L. Turner, Chief Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyCrimProp65@sandiego.gov

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

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On April 27, 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 April 27, 2018, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody



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

April 27, 2018

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	

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.