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PREVENTION, LLC, individually and doing business as  
NATURADE

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

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

Plaintiff,

v.

PREVENTION, LLC, individually and doing  
business as NATURADE, a Delaware limited  
liability company,

Defendant.

CASE NO. RG18919704

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 6, 2018  
Trial Date: None set

**1. INTRODUCTION**

**1.1** On September 6, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”),  
a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the  
2 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
3 against PREVENTION, LLC, individually and doing business as NATURADE  
4 (“NATURADE”). ERC alleges that various products manufactured, distributed, or sold by  
5 NATURADE contain lead and/or cadmium, chemicals listed under Proposition 65, and that the  
6 products expose consumers to one or both of these chemicals at a level requiring a Proposition  
7 65 warning. These products, identified in ERC’s Sixty-Day Notice of Violation dated June 12,  
8 2018 (“First Notice”) and in the Complaint, are identified in **Exhibit A**, which is incorporated  
9 herein by reference, and referred to individually as a “Covered Product” or collectively as the  
10 “Covered Products.” The reference to the Covered Products in **Exhibit A** also includes the  
11 chemical(s) which the Covered Products allegedly contain as asserted in the Notice and the  
12 Complaint. The Covered Products listed in **Exhibit A** also include the products identified in  
13 ERC’s December 28, 2018 Notice of Violation, as outlined in Section 1.6 below.

14 **1.2** ERC and NATURADE are hereinafter referred to individually as a “Party” or  
15 collectively as the “Parties.”

16 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
17 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
19 and encouraging corporate responsibility.

20 **1.4** ERC alleges that NATURADE is a business entity that has employed ten or more  
21 persons at all times relevant to this action, and qualifies as a “person in the course of doing  
22 business” within the meaning of Proposition 65. For purposes of this Stipulated Consent  
23 Judgment (“Consent Judgment”) only, NATURADE will not dispute this allegation.  
24 NATURADE agrees that it manufactures, distributes, and/or sells the Covered Products.

25 **1.5** The Complaint is based on allegations contained in ERC’s First Notice, which  
26 was served on the California Attorney General, other public enforcers, and NATURADE. A  
27 true and correct copy of the First Notice is attached hereto as **Exhibit B** and is hereby  
28 incorporated by reference. More than 60 days have passed since the First Notice was served on

1 the Attorney General, public enforcers, and NATURADE and no designated governmental  
2 entity has filed a complaint against NATURADE with regard to the Covered Products or the  
3 alleged violations.

4       **1.6**     On December 28, 2018, ERC served a Notice of Violation on the California  
5 Attorney General, other public enforcers, and NATURADE (“Second Notice”). A true and  
6 correct copy of the Second Notice is attached hereto as **Exhibit C** and incorporated by  
7 reference. The parties stipulate that the Complaint be deemed amended as of March 10, 2019  
8 to include the products set forth in ERC’s December 28, 2018 Notice of Violation. This  
9 Consent Judgment shall apply to all Covered Products set forth in Paragraph 1.1 and **Exhibit**  
10 **A**, which includes the products identified in the Second Notice, effective 60 days after  
11 December 28, 2018, provided no public enforcer is diligently pursuing the allegations set forth  
12 in the Second Notice. On March 10, 2019 more than 60 days will have passed since ERC’s  
13 December 28, 2018 Notice of Violation was served on the Attorney General, public enforcers,  
14 and NATURADE. (The First Notice and the Second Notice shall be collectively referred to as  
15 the “Notices”)

16       **1.7**     ERC’s Notices, Complaint and Amended Complaint, incorporating ERC’s  
17 Notice of Violation dated December 28, 2018, allege that use of the Covered Products exposes  
18 persons in California to lead and/or cadmium without first providing clear and reasonable  
19 warnings in violation of California Health and Safety Code section 25249.6.

20       **1.8**     NATURADE denies all material allegations contained in the Notices, Complaint  
21 and Amended Complaint, and NATURADE maintains that it has complied with Proposition 65  
22 with respect to the Covered Products.

23       **1.9**     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 Except for the representations made above, nothing in 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,  
28 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,

1 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed  
2 as an admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
3 purpose.

4 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall  
5 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
6 other or future legal proceeding unrelated to these proceedings.

7 **1.11** The Execution Date is the date on which it is fully signed by the Parties. The  
8 Effective Date of this Consent Judgment is the date on which it is entered as a judgment by this  
9 Court. The Compliance Date is one hundred eighty (180) days after the Effective Date (the  
10 “Compliance Date”).

## 11 **2. JURISDICTION AND VENUE**

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

## 20 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

21 **3.1** Any Covered Products that are manufactured on and after the Compliance Date  
22 that NATURADE thereafter “Distributes into California,” or sells in the State of California, shall  
23 either qualify as a Reformulated Covered Product under Section 3.3 or comply with the warning  
24 requirements of Section 3.2. “Distributes into California” shall mean to directly ship a Covered  
25 Product into California for sale in California or to sell a Covered Product to a retailer or  
26 distributor that NATURADE knows or has reason to know will sell the Covered Product in  
27 California.

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1           **3.1.1** A Covered Product for which only lead is identified in the Notices is not  
2 required to comply with any injunctive terms relating to cadmium in Section 3. A Covered  
3 Product for which only cadmium is identified in the Notices is not required to comply with any  
4 injunctive terms relating to lead in Section 3. Nothing in this Section affects NATURADE's  
5 duty to comply with Proposition 65 and its supporting regulations.

6           **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
7 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
8 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
9 product (using the largest serving size appearing on the product label), multiplied by servings  
10 of the product per day (using the largest number of recommended daily servings appearing on  
11 the product label), which equals micrograms of lead exposure per day. If the label contains no  
12 recommended daily servings, then the number of recommended daily servings of the product  
13 for purposes of the formula in this Section 3.1.2 shall be calculated as one serving per day.

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

## 23           **3.2 Clear and Reasonable Warnings**

24           **3.2.1** If NATURADE is required to provide a warning pursuant to Section 3.1,  
25 the following warning must be utilized ("Warning"):

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

1 The Warning must mention either lead or cadmium, as applicable, if a warning is only  
2 required for one of the chemicals. If NATURADE provides a warning for both lead and  
3 cadmium, then the term “chemicals including” and at least one of the bracketed terms “lead” and  
4 “cadmium” shall be used. The Warning shall be modified additionally to include a warning for  
5 cancer in a manner that complies with 27 Cal. Code Regs. § 25607.2 if a Covered Product  
6 contains more than 15 micrograms of lead as determined pursuant to Section 3.4.

7 **3.2.2** The Warning shall be securely affixed to or printed upon the container or  
8 label of each Covered Product. If the Warning is provided on the label, it must be set off from  
9 other surrounding information and enclosed in a box. In addition, for any Covered Product sold  
10 by NATURADE over the internet, the Warning, or a hyperlink using the word “**WARNING**” (in  
11 all capital letters and in bold print) that links to the Warning, shall appear in one of the following  
12 locations: (i) the checkout page when a California delivery address is indicated for any purchase  
13 of any Covered Product; or (ii) the product display page. An asterisk or other identifying method  
14 must be utilized to identify which products on the checkout page are subject to the Warning.

15 The Warning shall be at least the same size as the largest of any other health or safety  
16 warnings appearing on the label or container of the Covered Product packaging, or on the  
17 checkout page or product display page on NATURADE’s website, and the word “**WARNING**”  
18 shall be in all capital letters and in bold print. No other statements discussing Proposition 65 or  
19 lead or cadmium that contradict or conflict with the Warning shall accompany the Warning on  
20 the container or label or on NATURADE’s website.

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

### 25 **3.3 Reformulated Covered Products**

26 **3.3.1** With respect to Covered Products identified in the Notices for lead, a  
27 Reformulated Covered Product is one for which the Daily Lead Exposure Level is no greater than  
28 0.5 micrograms (“mcg”) of lead per day as determined by the quality control methodology

described in Section 3.4 after subtracting the amount of lead deemed to be “naturally occurring” (for purposes of this Consent Judgment only) pursuant to Section 3.3.2 below. With respect to Covered Products identified in the Notices for cadmium, a Reformulated Covered Product is one for which the Daily Cadmium Exposure Level is no greater than 4.1 mcg of cadmium per day as determined by the quality control methodology described in Section 3.4.

**3.3.2** In calculating the Daily Lead Exposure Level for a Covered Product, and to determine whether a Covered Product qualifies as a Reformulated Covered Product, NATURADE shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in the ingredient listed in **Table 1** that is contained in that Covered Product under the following conditions (NATURADE is entitled to submit this information to ERC confidentially): For each year that NATURADE claims entitlement to a “naturally occurring” allowance, NATURADE shall provide ERC with the following information: (a) NATURADE must produce to ERC a list of each ingredient in the Covered Product for which a “naturally occurring” allowance is claimed; and (b) NATURADE must provide ERC with documentation of laboratory testing, conducted during the year for which the “naturally occurring” allowance is claimed, that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in the ingredient listed in **Table 1** that is contained in the Covered Product and for which NATURADE intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in the ingredient listed in **Table 1** that is contained in the Covered Product, NATURADE 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 the ingredient listed in **Table 1**, NATURADE shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that ingredient. The amount of lead deemed “naturally occurring” in each of the Covered Products is the sum of the amounts of “naturally occurring” lead supplied by the quantity of each ingredient listed in **Table 1** that is present in each Covered Product. The information required by Sections 3.3.2 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year that NATURADE shall claim entitlement to

the “naturally occurring” allowance:

**Table 1**

<b>Ingredient</b>	<b>Allowances of Amount of Lead (Pb) Deemed “Naturally Occurring”</b>
Calcium (elemental)	Up to 0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	Up to 0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	Up to 8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	Up to 0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	Up to 0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	Up to 0.4 mcg Pb per gram of magnesium hydroxide
Zinc Gluconate	Up to 0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	Up to 1.1 mcg Pb per gram of potassium chloride
Cocoa powder	Up to 1.0 mcg Pb per gram of cocoa powder

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

**3.4.1** Prior to NATURADE’s first distribution or sale of Covered Products manufactured after the Compliance Date, and at least once a year thereafter for three consecutive years, NATURADE shall arrange for testing for lead and cadmium, as applicable, of three (3) randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, that NATURADE sells or Distributes into California. The testing requirement does not apply to any of the Covered Products for which NATURADE continuously and without interruption provides the Warning specified in Section 3.2 after the Compliance Date. If tests conducted pursuant to this Section demonstrate that no warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, NATURADE changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, then NATURADE shall test that Covered Product annually for at least two (2) consecutive years after such change or reformulation is made.

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2           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or  
3 “Daily Cadmium Exposure Level,” the arithmetic mean of the three (3) randomly selected  
4 samples of the Covered Products will be controlling.

5           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
6 laboratory method that complies with the performance and quality control factors appropriate for  
7 the method used, including limit of detection, qualification, accuracy, and precision that meets  
8 the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) achieving a  
9 limit of quantification of less than or equal to 0.010 mg/kg or any other testing method  
10 subsequently agreed to in writing by the Parties and approved by the Court through entry of a  
11 modified consent judgment.

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 United  
15 States Food & Drug Administration.

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

19           **3.4.6** NATURADE shall retain the laboratory reports of testing performed under  
20 this Section 3.4 period of at least five years from the testing date. If there is an allegation that a  
21 Covered Product is in violation of this Consent Judgment, ERC may make a written request to  
22 NATURADE delivered to the address set forth in Section 11 for copies of laboratory reports  
23 with results of testing for that Covered Product performed under Section 3.4. In response, within  
24 thirty (30) days of receipt of ERC’s written request, NATURADE shall provide such laboratory  
25 reports to ERC.

26       **4. SETTLEMENT PAYMENT**

27           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
28 attorney’s fees, and costs, NATURADE shall make a total payment of \$125,000.00 (“Total

Settlement Amount”) to ERC in six (6) consecutive monthly payments, according to the following payment schedule (“Due Dates”):

- Payment 1 -- \$20,833.33 within 5 days of April 1, 2019 (“Initial Due Date”)
- Payment 2 -- \$20,833.33 within 35 days of the Initial Due Date
- Payment 3 -- \$20,833.33 within 65 days of the Initial Due Date
- Payment 4 -- \$20,833.33 within 95 days of the Initial Due Date
- Payment 5 -- \$20,833.33 within 125 days of the Initial Due Date
- Payment 6 -- \$20,833.35 within 155 days of the Initial Due Date

NATURADE shall make these payments by wire transfer to ERC’s account, for which ERC will give NATURADE the necessary account information. The Total Settlement Amount shall be apportioned as follows:

**4.2** \$36,598.18 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$27,448.63) 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% (\$9,149.55) of the civil penalty.

**4.3** \$3,158.87 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

**4.4** \$27,448.62 shall be distributed to ERC as an Additional Settlement Payment (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements

1 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
2 the products.

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4         Based on a review of past years' actual budgets, ERC is providing the following list of  
5 activities ERC engages in to protect California consumers through Proposition 65 citizen  
6 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
7 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
8 supplement products that may contain lead and/or cadmium and are sold to California  
9 consumers. This work includes continued monitoring and enforcement of past consent judgments  
10 and settlements to ensure companies are in compliance with their obligations thereunder, with a  
11 specific focus on those judgments and settlements concerning lead and/or cadmium. This work  
12 also includes investigation of new companies that ERC does not obtain any recovery through  
13 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining  
14 ERC's Voluntary Compliance Program by acquiring products from companies, developing and  
15 maintaining a case file, testing products from these companies, providing the test results and  
16 supporting documentation to the companies, and offering guidance in warning or implementing a  
17 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT  
18 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the  
19 numbers of contaminated products that reach California consumers by providing access to free  
20 testing for lead in dietary supplement products (Products submitted to the program are screened  
21 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
22 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
23 that submitted the product).

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

1           **4.5**     \$24,494.98 shall be distributed to Adams Broadwell Joseph & Cardozo as  
2 reimbursement of ERC's attorney's fees, while \$33,299.35 shall be distributed to ERC for its  
3 in-house legal fees.

4           **4.6**     In the event that NATURADE fails to remit a payment pursuant to Section 4.1  
5 of this Consent Judgment on or before the respective Due Date, NATURADE shall be deemed  
6 to be in material breach of its obligations under this Consent Judgment. ERC shall provide  
7 written notice of the delinquency to NATURADE via electronic mail. If NATURADE fails to  
8 deliver the delinquent payment within ten (10) days from the written notice, the Total  
9 Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall be  
10 immediately due and owing and shall accrue interest at the statutory judgment interest rate  
11 provided in the California Code of Civil Procedure section 685.010. Additionally,  
12 NATURADE agrees to pay ERC's reasonable attorney's fees and costs for any efforts to  
13 collect the payment due under this Consent Judgment.

14           **4.7**     Except as explicitly provided herein, each Party shall bear its own fees and  
15 costs.

16       **5.   MODIFICATION OF CONSENT JUDGMENT**

17           **5.1**     This Consent Judgment may be modified, as to its injunctive terms only, upon  
18 written agreement of the Parties and upon entry of a modified Consent Judgment by the Court  
19 thereon, or upon motion of either Party as provided under this Section 5 and upon entry of a  
20 modified Consent Judgment.

21           **5.2**     If there is a different naturally occurring allowance from that specified in **Table**  
22 **1**, or if there is a less stringent lead or cadmium standard than that specified in Section 3.3,  
23 which is adopted after the Execution Date by a final statutory or regulatory amendment to  
24 Proposition 65, then NATURADE or ERC, at either of their options, shall be entitled to seek  
25 modification of the Consent Judgment by the Court to incorporate such other allowances or  
26 standard.

27           **5.3**     If either party seeks to modify this Consent Judgment pursuant to Sections 5.1  
28 and/or 5.2 ("noticing party"), then the noticing party must provide written notice to the other

1 party (“receiving party”) of its intent (“Notice of Intent”). If the receiving party seeks to meet  
2 and confer regarding the proposed modification in the Notice of Intent, then it must provide  
3 written notice to the noticing party within thirty (30) days of receiving the Notice of Intent. If  
4 the receiving party notifies the noticing party in a timely manner of its intent to meet and  
5 confer, then the Parties shall meet and confer in good faith as required in this Section. If the  
6 receiving party does not provide timely notice to the noticing party of its intent to meet and  
7 confer under this Section 5.3, the noticing party shall be entitled to seek Court approval of the  
8 modification requested in its Notice of Intent and the receiving Party shall not be entitled to  
9 object to the requested modification. If the receiving party provides timely notice to the  
10 noticing party of its intent to meet and confer under this Section 5.3, the Parties shall meet in  
11 person or via telephone within thirty (30) days of the receiving party’s notification of its intent  
12 to meet and confer. Within thirty (30) days of such meeting, if the receiving party disputes the  
13 proposed modification, the receiving party shall provide to the requesting party a written basis  
14 for its position. The Parties shall continue to meet and confer for an additional thirty (30) days  
15 in an effort to resolve any remaining disputes. Should it become necessary, the Parties may  
16 agree in writing to different deadlines for the meet-and-confer period.

17 **5.4** In the event that NATURADE initiates or otherwise requests a modification  
18 pursuant to Sections 5.1 and/or 5.2, , and the meet-and -confer process leads to a joint motion  
19 or application to modify the Consent Judgment, NATURADE shall reimburse ERC its costs  
20 and reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and  
21 arguing the motion or application.

22 **5.5** If the meet-and-confer process specified in Section 5.3 does not lead to a joint  
23 motion or application in support of a modification of the Consent Judgment, or if the receiving  
24 party does not agree to the noticing party’s requested modification under Sections 5.1 and/or  
25 5.2, then either Party may seek judicial relief on its own. In that event, the Party seeking  
26 judicial relief shall bear the burden of proving, by a preponderance of the evidence, that it  
27 meets the grounds for the requested relief.  
28

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

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

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

13     **7.     APPLICATION OF CONSENT JUDGMENT**

14         This Consent Judgment shall be binding upon, and shall inure to the benefit of, the Parties  
15 and their respective successors, and assigns.

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 NATURADE and its respective officers,  
19 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions  
20 (collectively referred to as the "NATURADE Releasees"), suppliers, franchisors, licensors,  
21 customers (not including private label customers of NATURADE), distributors, wholesalers,  
22 retailers, and all other upstream and downstream entities in the distribution chain of any  
23 Covered Product, and the predecessors, successors, and assigns of any of them (collectively,  
24 the "Released Parties"). ERC, on behalf of itself and its respective officers, principals,  
25 shareholders, owners, directors, employees, agents, affiliates, parents, subsidiaries, servants,  
26 administrators, successors, assigns, and attorneys (collectively referred as the "ERC  
27 Releasees"), and on behalf of the general public in the public interest, fully releases and  
28 discharges the NATURADE Releasees and the Released Parties from any and all claims,

1 actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not  
2 limited to attorneys' fees, expert fees, and investigator fees), costs and expenses (collectively  
3 referred to as the "Claims") for alleged violations of Proposition 65 asserted in the Notices  
4 arising from the failure to provide warnings for alleged exposures to lead and cadmium, or for  
5 causing alleged exposures to lead and cadmium, in Covered Products manufactured before the  
6 Compliance Date. Compliance with the terms of this Consent Judgment shall be deemed to  
7 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
8 exposures to lead and cadmium in the Covered Products manufactured on and after the  
9 Compliance Date.

10 **8.2** ERC on its own behalf only, and NATURADE on its own behalf only,  
11 further waive and release any and all claims they may have against each other for all actions or  
12 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
13 65 in connection with the Notices, Complaint and Amended Complaint up through and  
14 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
15 any Party's right to seek to enforce the terms of this Consent Judgment.

16 **8.3** ERC, on behalf of itself and the ERC Releasees, and NATURADE, on behalf of  
17 itself and the NATURADE Releasees, hereby release and discharge each other from any and all  
18 known and unknown Claims for alleged violations of Proposition 65 arising from or relating to  
19 alleged exposures to lead and lead compounds and cadmium in the Covered Products  
20 manufactured prior to the Compliance Date and for all actions or statements made or  
21 undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection  
22 with the Notices, Complaint and Amended Complaint up through and including the  
23 Compliance Date. It is possible that other Claims not known to the Parties arising out of the  
24 facts alleged in the Notices of Violation, the Complaint or the Amended Complaint and relating  
25 to the Covered Products will develop or be discovered. ERC, on behalf of itself and the ERC  
26 Releasees and NATURADE on behalf of itself and the NATURADE Releasees, acknowledge  
27 that this Consent Judgment is expressly intended to cover and include all such Claims,  
28 including all rights of action therefor up through and including the Compliance Date. ERC, the

1 ERC Releasees, NATURADE, and the NATURADE Releasees have full knowledge of the  
2 contents of California Civil Code section 1542. ERC, on behalf of itself and the ERC  
3 Releasees, and NATURADE on behalf of itself and the NATURADE Releasees, acknowledge  
4 that the Claims released in Sections 8.1 and 8.2 may include unknown Claims, and nevertheless  
5 waive California Civil Code section 1542 as to any such unknown Claims. California Civil  
6 Code section 1542 reads as follows:

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

11 ERC and NATURADE acknowledge and understand the significance and consequences of this  
12 specific waiver of California Civil Code section 1542.

13 **8.4** Nothing in the scope of the releases in this Section 8 shall affect or limit any  
14 Party’s right to seek to enforce the terms of this Consent Judgment. Nothing in this Consent  
15 Judgment is intended to apply to any occupational or environmental exposures arising under  
16 Proposition 65, nor shall it apply to any of NATURADE’s products other than the Covered  
17 Products.

## 18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 21 **10. GOVERNING LAW**

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

## 24 **11. PROVISION OF NOTICE**

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

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



Chris Heptinstall, Executive Director, Environmental Research Center  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
Telephone: (619) 500-3090  
Email: [chris\\_erc501c3@yahoo.com](mailto:chris_erc501c3@yahoo.com)

With a copy to:  
TANYA A. GULESSERIAN  
CHRISTINA M. CARO  
ADAMS BROADWELL JOSEPH & CARDOZO  
601 Gateway Blvd., Suite 1000  
South San Francisco, CA 94080-7037  
Telephone: (650) 589-1660  
Fax No.: (650) 589-5062  
Email: [tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[ccaro@adamsbroadwell.com](mailto:ccaro@adamsbroadwell.com)

**FOR PREVENTION, LLC, individually and doing business as NATURADE:**

CLAUDE TELLIS, CEO  
Prevention, LLC dba NATURADE  
2030 Main Street, Suite 630  
Irvine, CA 92614

With a copy to:  
DANIEL S. SILVERMAN  
VENABLE LLP  
2049 Century Park East, Suite 2300  
Los Angeles, CA 90067  
Telephone: (310) 229-9900  
Facsimile: (310) 229-9901  
Email: [dssilverman@venable.com](mailto:dssilverman@venable.com)

**12. COURT APPROVAL**

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

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

**12.3** If the California Attorney General objects to any term of this Consent Judgment, the Parties shall use reasonable, good faith efforts to resolve the concern in a timely manner,

and if possible prior to the hearing on the motion.

### **13. EXECUTION AND COUNTERPARTS**

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

### **14. DRAFTING**

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

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

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

### **16. ENFORCEMENT**

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

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 **17.1** This Consent Judgment contains the sole and entire agreement and  
3 understanding of the Parties with respect to the entire subject matter herein, and any and all  
4 prior discussions, negotiations, commitments, and understandings related hereto. No  
5 representations, oral or otherwise, express or implied, other than those contained herein have  
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
7 herein, shall be deemed to exist or to bind any Party.

8 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

18 (2) Make the findings pursuant to California Health and Safety Code section  
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21 Dated: 12/31/, 2018

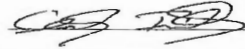
22 ENVIRONMENTAL RESEARCH  
23 CENTER, INC.

24 By: 

25 Chris Hennig, Executive Director

1 Dated: December 31, 2018

PREVENTION, LLC, individually and  
doing business as NATURADE



By: Claude Tellis  
Its: CEO

6 **APPROVED AS TO FORM:**

7 Dated: \_\_\_\_\_, 2018

ADAMS BROADWELL JOSEPH &  
CARDOZO

By: \_\_\_\_\_  
Christina M. Caro  
Attorney for Plaintiff Environmental  
Research Center, Inc.

11 Dated: Dec. 31, 2018

VENABLE LLP

By: 

Daniel S. Silverman  
Attorneys for Defendant Prevention, LLC,  
individually and doing business as  
Naturade

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26 Dated: \_\_\_\_\_, 2018

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

1 Dated: \_\_\_\_\_, 2018

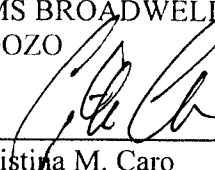
PREVENTION, LLC, individually and  
doing business as NATURADE

By: Claude Tellis  
Its: CEO

5 **APPROVED AS TO FORM:**

6 Dated: December 31, 2018

ADAMS BROADWELL JOSEPH &  
CARDOZO

By:   
Christina M. Caro  
Attorney for Plaintiff Environmental  
Research Center, Inc.

12 Dated: \_\_\_\_\_, 2018

VENABLE LLP

By: \_\_\_\_\_  
Daniel S. Silverman  
Attorneys for Defendant Prevention, LLC,  
individually and doing business as  
Naturade

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26 Dated: \_\_\_\_\_, 2018

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

# EXHIBIT A

## COVERED PRODUCTS

- 1) Plant Based Vegan Slim High Protein Weight Loss Shake Vanilla (lead)
- (2) Naturade Total Soy Meal Replacement Strawberry Cream (lead)
- (3) Vegan Smart All-In-One Nutritional Shake Wild Berries (lead)
- (4) Vegan Smart Plant Based Pea Protein Vegan Shake Chocolate (lead)
- (5) Vegan Smart Plant Based Protein & Greens Plus Fruits & Roots Vanilla Crème (lead)
- (6) Vegan Smart All-In-One Nutritional Shake Vanilla (lead)
- (7) Vegan Smart All-In-One Nutritional Shake Peaches & Cream (lead)
- (8) Naturade Vegan Smart All-In-One Nutritional Shake Chocolate (lead, cadmium)
- (9) Vegan Smart Love is Love All-In-One Nutritional Shake Cookies and Cream (lead, cadmium)
- (10) Vegan Smart Love is Love All-In-One Nutritional Shake Chocolate Raspberry (lead, cadmium)
- (11) Vegan Smart BAV All-In-One Nutritional Shake Strawberry Shortcake (lead)
- (12) Naturade Total Soy Meal Replacement Bavarian Chocolate (lead)
- (13) Vegan Slim High Protein Weight Loss Shake Chocolate (lead, cadmium)
- (14) VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Vanilla Crème (lead)
- (15) VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Chocolate Fudge (lead)
- (16) VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Chai Spices (lead)

///

- 1 (17) VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love  
2 Wild Berries (lead)
- 3 (18) VeganSmart Organic All-In-One Nutritional Shake Vanilla Crème (lead)
- 4 (19) VeganSmart Organic All-In-One Nutritional Shake Chocolate Fudge (lead)
- 5 (20) VeganSmart Organic All-In-One Nutritional Shake Chai Spices (lead)
- 6 (21) VeganSmart Organic All-In-One Nutritional Shake Wild Berries (lead)
- 7 (22) VeganSmart Signature Series Organic All-In-One Nutritional Shake Vanilla Crème  
8 (lead)
- 9 (23) VeganSmart Signature Series Organic All-In-One Nutritional Shake Chocolate  
10 Fudge (lead)
- 11 (24) VeganSmart Signature Series Organic All-In-One Nutritional Shake Chai Spices  
12 (lead)
- 13 (25) VeganSmart Signature Series Organic All-In-One Nutritional Shake Wild Berries  
14 (lead)
- 15 (26) VeganSmart Organic Protein Pea Protein Shake French Vanilla (lead)
- 16 (27) VeganSmart Organic Protein Pea Protein Shake Chocolate Fudge (lead, cadmium)
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# EXHIBIT B



ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

MILA A. BUCKNER  
DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
MARC D. JOSEPH  
RACHAEL E. KOSS  
COLLIN S. MCCARTHY  
LINDA T. SOBCZYNSKI

June 12, 2018

**VIA CERTIFIED MAIL**

Claude Tellis or Current CEO  
Prevention, LLC, individually and  
doing business as Naturade  
2030 Main Street, Suite 630  
Irvine, CA 92614

Claude Tellis  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
2030 Main Street, Suite 630  
Irvine, CA 92614

Cogency Global, Inc.  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
850 New Burton Road, Suite 201  
Dover, DE 19904

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA ELECTRONIC MAIL**

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

**VIA ELECTRONIC MAIL**

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

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

**VIA ELECTRONIC MAIL**

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, 4<sup>th</sup> 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

**VIA ELECTRONIC MAIL**

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

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

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

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

**Prevention, LLC, individually and doing business as Naturade**

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

- 1. Plant Based Vegan Slim High Protein Weight Loss Shake Vanilla - Lead**
- 2. Naturade Total Soy Meal Replacement Strawberry Cream - Lead**
- 3. Vegan Smart All-In-One Nutritional Shake Wild Berries - Lead**
- 4. Vegan Smart Plant Based Pea Protein Vegan Shake Chocolate - Lead**
- 5. Vegan Smart Plant Based Protein & Greens Plus Fruits & Roots Vanilla Crème - Lead**
- 6. Vegan Smart All-In-One Nutritional Shake Vanilla - Lead**
- 7. Vegan Smart All-In-One Nutritional Shake Peaches & Cream - Lead**
- 8. Naturade Vegan Smart All-In-One Nutritional Shake Chocolate – Lead, Cadmium**
- 9. Vegan Smart Love is Love All-In-One Nutritional Shake Cookies and Cream – Lead, Cadmium**
- 10. Vegan Smart Love is Love All-In-One Nutritional Shake Chocolate Raspberry – Lead, Cadmium**
- 11. Vegan Smart BAV All-In-One Nutritional Shake Strawberry Shortcake - Lead**
- 12. Naturade Total Soy Meal Replacement Bavarian Chocolate - Lead**
- 13. Vegan Slim High Protein Weight Loss Shake Chocolate – Lead, 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.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since June 12, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

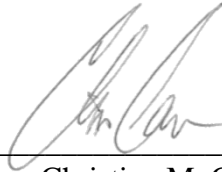
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 12, 2018

Page 5

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Christina M. Caro', is written over a horizontal line.

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

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

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

**CERTIFICATE OF MERIT**

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

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 12, 2018



---

Christina M. Caro

**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 June 12, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Claude Tellis or Current CEO  
Prevention, LLC, individually and  
doing business as Naturade  
2030 Main Street, Suite 630  
Irvine, CA 92614

Cogency Global, Inc.  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
850 New Burton Road, Suite 201  
Dover, DE 19904

Claude Tellis  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
2030 Main Street, Suite 630  
Irvine, CA 92614

On June 12, 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 June 12, 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](mailto:sgrassini@contracostada.org)

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

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

June 12, 2018

Page 8

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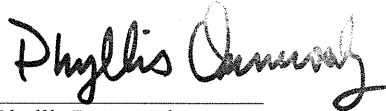
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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On June 12, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on June 12, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", written over a horizontal line.

Phyllis Dunwoody

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

June 12, 2018

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## Service List

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District Attorney, Mono County  
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District Attorney, Nevada County  
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Nevada City, CA 95959

District Attorney, Orange County  
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District Attorney, Plumas County  
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## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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<sup>1</sup> 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](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 contaminant<sup>2</sup> 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

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<sup>2</sup> 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](mailto: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.

# EXHIBIT C



# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

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MARC D. JOSEPH  
RACHAEL E. KOSS  
NIRIT LOTAN  
MILES F. MAURINO

LAURA DEL CASTILLO  
*Of Counsel*

December 28, 2018

### VIA CERTIFIED MAIL

Claude Tellis or Current CEO  
Prevention, LLC, individually and  
doing business as Naturade  
2030 Main Street, Suite 630  
Irvine, CA 92614

Claude Tellis  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
2030 Main Street, Suite 630  
Irvine, CA 92614

Cogency Global, Inc.  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
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Dover, DE 19904

### VIA ONLINE SUBMISSION

Office of the California Attorney General

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Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

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

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

**Prevention, LLC, individually and doing business as Naturade**

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

- 1. VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Vanilla Crème - Lead**
- 2. VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Chocolate Fudge - Lead**
- 3. VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Chai Spices - Lead**
- 4. VeganSmart Signature Series Organic All-In-One Nutritional Shake Love is Love Wild Berries - Lead**
- 5. VeganSmart Organic All-In-One Nutritional Shake Vanilla Crème - Lead**
- 6. VeganSmart Organic All-In-One Nutritional Shake Chocolate Fudge - Lead**
- 7. VeganSmart Organic All-In-One Nutritional Shake Chai Spices - Lead**
- 8. VeganSmart Organic All-In-One Nutritional Shake Wild Berries - Lead**
- 9. VeganSmart Signature Series Organic All-In-One Nutritional Shake Vanilla Crème - Lead**
- 10. VeganSmart Signature Series Organic All-In-One Nutritional Shake Chocolate Fudge - Lead**
- 11. VeganSmart Signature Series Organic All-In-One Nutritional Shake Chai Spices - Lead**
- 12. VeganSmart Signature Series Organic All-In-One Nutritional Shake Wild Berries - Lead**
- 13. VeganSmart Organic Protein Pea Protein Shake French Vanilla - Lead**
- 14. VeganSmart Organic Protein Pea Protein Shake Chocolate Fudge – Lead, 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.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since December 28, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
December 28, 2018  
Page 5

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Christina M. Caro', is written over a horizontal line.

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

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

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

**CERTIFICATE OF MERIT**

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

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 28, 2018

  
\_\_\_\_\_  
Christina M. Caro

**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 December 28, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Claude Tellis or Current CEO  
Prevention, LLC, individually and  
doing business as Naturade  
2030 Main Street, Suite 630  
Irvine, CA 92614

Cogency Global, Inc.  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
850 New Burton Road, Suite 201  
Dover, DE 19904

Claude Tellis  
(Registered Agent for Prevention, LLC,  
individually and doing business as Naturade)  
2030 Main Street, Suite 630  
Irvine, CA 92614

On December 28, 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 December 28, 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:

Nancy O’Malley, District Attorney  
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Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
December 28, 2018  
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gregory.alker@sfgov.org

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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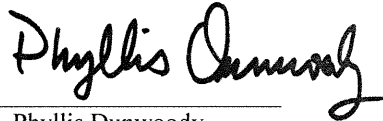
Phillip J. Cline, District Attorney  
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Prop65@co.tulare.ca.us

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

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

On December 28, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on December 28, 2018, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

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

December 28, 2018

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**Service List**

District Attorney, Alpine County  
P.O. Box 248  
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Jackson, CA 95642

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Oroville, CA 95965

District Attorney, Colusa County  
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Colusa, CA 95932

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Crescent City, CA 95531

District Attorney, El Dorado County  
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Placerville, CA 95667

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Alturas, CA 96101-4020

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Santa Ana, CA 92701

District Attorney, Placer County  
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San Bernardino, CA 92415

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Redding, CA 96001

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District Attorney, Stanislaus County  
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Yuba City, CA 95991

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District Attorney, Trinity County  
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Sonora, CA 95370

District Attorney, Yuba County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
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Los Angeles, CA 90012

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16<sup>th</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***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

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<sup>1</sup> 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>.

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](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 contaminant<sup>2</sup> 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 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.

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<sup>2</sup> See Section 25501(a)(4).

## *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](mailto: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.