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

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

20 Plaintiff,

21 v.

22 REPP SPORTS, LLC, a Florida limited  
23 liability company and MACROCAP LABS,  
24 INC., a Florida corporation,

25 Defendants.

CASE NO. RG19019979

ASSIGNED FOR ALL PURPOSES TO  
HONORABLE BRAD SELIGMAN,  
DEPARTMENT 23

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 22, 2019  
Trial Date: None set

26 **1. INTRODUCTION**

27 **1.1** On May 22, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-  
28 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a

1 Complaint for Injunctive Relief and Civil Penalties pursuant to the provisions of California  
2 Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against REPP SPORTS, LLC  
3 (“REPP SPORTS”) and MACROCAP LABS, INC. (“MACROCAP LABS”) (REPP SPORTS  
4 and MACROCAP LABS are collectively referred to as “DEFENDANTS”<sup>1</sup>) alleging Proposition  
5 65 violations in eight (8) of DEFENDANTS’ dietary supplement products. Subsequently, on  
6 June 10, 2019, a First Amended Complaint (the operative Complaint referred to hereinafter as  
7 the “Complaint”) was filed alleging Proposition 65 violations in an additional five (5) of  
8 DEFENDANTS’ dietary supplement products.

9       **1.2** In this action, ERC alleges that a number of products manufactured, distributed,  
10 or sold by DEFENDANTS contain lead, a chemical listed under Proposition 65 as a carcinogen  
11 and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition  
12 65 warning. These products (referred to hereinafter individually as a “Covered Product” or  
13 collectively as “Covered Products”) are: (1) Repp Sports Premium Protein Complex Whey+  
14 Vanilla Waffle Cone, (2) Repp Sports Premium Protein Complex Whey+ Tropic O’s, (3) Repp  
15 Sports Premium Protein Complex Whey+ Funnel Cake, (4) Repp Sports Premium Protein  
16 Complex Whey+ Choco-Hoo, (5) Repp Sports High Intensity Pre-Workout Reactr Zap Berry, (6)  
17 Repp Sports High Intensity Pre-Workout Reactr Rainbow Burst, (7) Repp Sports High Intensity  
18 Pre-Workout Reactr Dragon Fruit, (8) Repp Sports High Intensity Pre-Workout Reactr Blue  
19 Magic, (9) Repp Sports Hyper Sleep Performance Sleep Aid Vanilla Soft Serve, (10) Repp  
20 Sports Pre-Workout Reactr Dragon Fruit, (11) Repp Sports Pre-Workout Reactr Zap Berry, (12)  
21 Repp Sports Pre-Workout Reactr Blue Magic, and (13) Repp Sports Pre-Workout Reactr  
22 Rainbow Burst.

23       **1.3** ERC and DEFENDANTS are hereinafter referred to individually as a “Party” or  
24 collectively as the “Parties.”

25       **1.4** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
26 causes, helping safeguard the public from health hazards by reducing the use and misuse of

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27  
28 <sup>1</sup> References to “DEFENDANTS” in Sections 3, 4 and 6 shall include REPP SPORTS only at times that REPP  
SPORTS qualifies as a “person in the course of doing business.”

1 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
2 and encouraging corporate responsibility.

3       **1.5**     ERC asserts that DEFENDANTS are business entities that have employed ten or  
4 more persons at all times relevant to this action, either individually or together as a single  
5 enterprise. For purposes of this Stipulated Consent Judgment (“Consent Judgment”), the Parties  
6 agree that MACROCAP LABS qualifies as a “person in the course of doing business” within the  
7 meaning of Proposition 65. REPP SPORTS and ERC dispute whether REPP SPORTS qualifies  
8 as a “person in the course of doing business” within the meaning of Proposition 65 at times  
9 relevant to this case. Nevertheless, REPP SPORTS agrees that at all times hereafter that REPP  
10 SPORTS employs fewer than 10 people and does not qualify as a “person in the course of doing  
11 business” within the meaning of Proposition 65, REPP SPORTS will cooperate and not interfere  
12 with ERC and MACROCAP LABS in the enforcement of the terms of this Consent Judgment.  
13 Further, REPP SPORTS agrees that at any time hereafter that REPP SPORTS employs more than  
14 9 people and does qualify as a “person in the course of doing business” within the meaning of  
15 Proposition 65, REPP SPORTS will comply with and be bound by the terms of this Consent  
16 Judgment. The Parties agree that MACROCAP LABS manufactures, distributes, and/or sells the  
17 Covered Products.

18       **1.6**     The Complaint is based on allegations contained in ERC’s Notices of Violation  
19 dated March 12, 2019 and March 28, 2019 that were served on the California Attorney General,  
20 other public enforcers, and DEFENDANTS (“Notices”). True and correct copies of the 60-Day  
21 Notices dated March 12, 2019 and March 28, 2019 are attached hereto as **Exhibits A and B**  
22 respectively, and each is incorporated herein by reference.

23       **1.7**     More than 60 days have passed since the Notices were served on the Attorney  
24 General, public enforcers, and DEFENDANTS and no designated governmental entity has filed  
25 a Complaint against DEFENDANTS with regard to the Covered Products or the alleged  
26 violations.

27       **1.8**     ERC’s Notices and Complaint allege that use of the Covered Products exposes  
28 persons in California to lead without first providing clear and reasonable warnings in violation

1 of California Health and Safety Code section 25249.6. DEFENDANTS deny all material  
2 allegations contained in the Notices and Complaint. Nothing in this Consent Judgment shall be  
3 construed as an admission by DEFENDANTS of any fact, issue of law, or violation of law, nor  
4 shall compliance with the Consent Judgment constitute or be construed as an admission by  
5 DEFENDANTS of any fact, issue of law or violation of law, at any time, for any purpose.

6 **1.9** The Parties have entered into this Consent Judgment in order to settle,  
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
9 be construed as an admission by any of the Parties or by any of their respective officers,  
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
11 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
12 violation of law.

13 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall  
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
15 current or future legal proceeding unrelated to these proceedings.

16 **1.11** The Effective Date of this Consent Judgment is the date on which ERC serves  
17 notice on DEFENDANTS that it has been entered as a Judgment by this Court.

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning on the Effective Date, DEFENDANTS shall be permanently enjoined  
28 from manufacturing for sale in the State of California, "Distributing into the State of

1 California,” or directly selling in the State of California, any Covered Products which expose a  
2 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it  
3 meets the warning requirements under Section 3.2.

4 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
5 of California” shall mean to directly ship a Covered Product into California for sale in  
6 California or to sell a Covered Product to a distributor that DEFENDANTS know or have  
7 reason to know will sell the Covered Product in California.

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

15 **3.1.3.** In calculating the Daily Lead Exposure Level for a Covered Product,  
16 DEFENDANTS shall be allowed to deduct the amount of lead which is deemed to be Naturally  
17 Occurring Lead in any ingredient listed in **Table 1** (“Lead Ingredient”) that is contained in the  
18 Covered Product under the following conditions: (a) DEFENDANTS themselves or from their  
19 Lead Ingredient supplier shall obtain either (i) a valid test result showing lead is present in the  
20 Lead Ingredient at a specific concentration or in a range; or (ii) a certificate of analysis or  
21 certificate of compliance that shows lead is present in the Lead Ingredient at a specific  
22 concentration or in a range; and (b) DEFENDANTS shall obtain the documentation in Section  
23 3.1.3(a)(i) or (ii) for at least two delivered lots of a Lead Ingredient, if up to four (4) lots of that  
24 Lead Ingredient are delivered within twelve (12) months of the Effective Date or its  
25 anniversary, as applicable, and documentation for at least three (3) lots of a Lead Ingredient if  
26 up to eight (8) lots of that Lead Ingredient are delivered within twelve (12) months of the  
27 Effective Date or its anniversary, as applicable, and documentation for at least four (4) lots of a  
28 Lead Ingredient if nine (9) or more lots of that Lead Ingredient are delivered within twelve (12)

1 months of the Effective Date or its anniversary date, as applicable; and (c) DEFENDANTS  
 2 shall document the total amount (in grams) of each Lead Ingredient contained in the Covered  
 3 Product. If the documentation obtained pursuant to Section 3.1.3(a) and (b) documents the  
 4 presence of lead in any Lead Ingredient in **Table 1**, DEFENDANTS shall be entitled to deduct,  
 5 in micrograms/gram, the actual amount of lead in the Lead Ingredient, up to the amount of  
 6 Naturally Occurring Lead for that Lead Ingredient as provided in **Table 1**. If the Covered  
 7 Product does not contain a Lead Ingredient listed in **Table 1**, DEFENDANTS shall not be  
 8 entitled to a deduction for the Naturally Occurring Lead for the Covered Product.

9 To deduct the Naturally Occurring Lead in any Covered Product for purposes of  
 10 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this  
 11 Section 3.1.3, DEFENDANTS shall provide to ERC, within thirty (30) days after the first  
 12 anniversary of the Effective Date, the documentation required under Section 3.1.3(a)-(c).  
 13 Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if  
 14 DEFENDANTS deduct Naturally Occurring Lead in a Lead Ingredient in calculating the Daily  
 15 Lead Exposure Level, DEFENDANTS shall provide to ERC, within thirty (30) days after each  
 16 such anniversary date, the documentation for each Lead Ingredient required under Section 3.1.3  
 17 (a)-(c) for each such applicable twelve (12) month period prior to the anniversary date.


18 **TABLE 1**

INGREDIENT	NATURALLY OCCURING AMOUNTS OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram

Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram
Chocolate Liquor	Up to 1.0 micrograms/gram
Cocoa Butter	Up to 0.1 micrograms/gram

### 3.2 Clear and Reasonable Warnings

If DEFENDANTS are required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

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

DEFENDANTS shall use the phrase “cancer and” in the Warning if DEFENDANTS have reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if DEFENDANTS have reason to believe that another Proposition 65 chemical is present which may require a cancer warning. Where the Warning is being provided for more than one endpoint (cancer and reproductive toxicity) the Warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause both cancer and reproductive toxicity and has been so identified in the Warning.

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

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of DEFENDANTS’ product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. A symbol

1 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline  
2 shall be placed to the left of the text of the Warning, in a size no smaller than the height of the  
3 word “**WARNING.**” No statements intended to or likely to have the effect of diminishing the  
4 impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the  
5 Warning. Further, no statements may accompany the Warning that state or imply that the source  
6 of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

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

### 11 **3.3 Conforming Covered Products**

12 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
13 Level” is no greater than 0.5 micrograms of lead per day as determined by the quality control  
14 methodology described in Section 3.4.

### 15 **3.4 Testing and Quality Control Methodology**

16 **3.4.1** Beginning within one year of the Effective Date, DEFENDANTS shall  
17 arrange for lead testing of the Covered Products, to determine whether they meet the  
18 Conforming Covered Products definition listed above, at least once a year for a minimum of  
19 three consecutive years by arranging for testing of three randomly selected samples of each of  
20 the Covered Products, in the form intended for sale to the end-user, which DEFENDANTS  
21 intend to sell or are manufacturing for sale in California, directly selling to a consumer in  
22 California or “Distributing into the State of California.” If tests conducted pursuant to this  
23 Section demonstrate that no Warning is required for a Covered Product during each of three  
24 consecutive years, then the testing requirements of this Section will no longer be required as to  
25 that Covered Product.

26 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the  
27 average lead detection result of the three (3) randomly selected samples of the Covered  
28 Products will be controlling.



1           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
2 laboratory method that complies with the performance and quality control factors appropriate  
3 for the method used, including limit of detection, qualification, accuracy, and precision that  
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

6           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
7 independent third party laboratory certified by the California Environmental Laboratory  
8 Accreditation Program or an independent third-party laboratory that is registered with the  
9 United States Food & Drug Administration.

10           **3.4.5** Nothing in this Consent Judgment shall limit DEFENDANTS’ ability to  
11 conduct, or require that others conduct, additional testing of the Covered Products, including  
12 the raw materials used in their manufacture.

13           **3.4.6** Within thirty (30) days of ERC’s written request, DEFENDANTS shall  
14 deliver lab reports obtained pursuant to Section 3.4 to ERC. DEFENDANTS shall retain all test  
15 results and documentation for a period of three years from the date of each test. ERC shall not  
16 request such lab reports more than once annually, absent good cause to do so.

17           **3.4.7** No testing shall be required for a Covered Product which continuously  
18 and without interruption after the Effective Date (a) includes a Warning compliant with Section  
19 3.2, (b) is not being manufactured, (c) is not sold in California, manufactured for sale in  
20 California or distributed in California, (d) is not shipped to a California shipping address, or (e)  
21 is merely transshipped through California (i.e., remains unopened) to a retailer or distributor  
22 outside of California that does not sell that particular Covered Product to persons or entities  
23 inside of California. The burden shall be on DEFENDANTS to provide documentation proving  
24 entitlement to the testing exceptions covered by this Section 3.4.7 within thirty (30) days of  
25 ERC’s written request. ERC shall not request such documentation more than once annually,  
26 absent good cause to do so

27       **4. SETTLEMENT PAYMENT**

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

1 attorney's fees, and costs, DEFENDANTS shall make a total payment of \$47,001.77 ("Total  
2 Settlement Amount") according to the following payment schedule (the "Periodic Payments"):

- 3 • Payment 1 -- \$25,000.00 within 21 days of the Effective Date ("Due Date").
- 4 • Payment 2 -- \$1,833.48 within 30 days of the Effective Date (Due Date").
- 5 • Payment 3 -- \$1,833.48 within 60 days of the Effective Date (Due Date").
- 6 • Payment 4 -- \$1,833.48 within 90 days of the Effective Date (Due Date").
- 7 • Payment 5 -- \$1,833.48 within 120 days of the Effective Date (Due Date").
- 8 • Payment 6 -- \$1,833.48 within 150 days of the Effective Date (Due Date").
- 9 • Payment 7 -- \$1,833.48 within 180 days of the Effective Date (Due Date").
- 10 • Payment 8 -- \$1,833.48 within 210 days of the Effective Date (Due Date").
- 11 • Payment 9 -- \$1,833.48 within 240 days of the Effective Date (Due Date").
- 12 • Payment 10 -- \$1,833.48 within 270 days of the Effective Date (Due Date").
- 13 • Payment 11 -- \$1,833.48 within 300 days of the Effective Date (Due Date").
- 14 • Payment 12 -- \$1,833.48 within 330 days of the Effective Date (Due Date")
- 15 • Payment 13 -- \$1,833.49 within 360 days of the Effective Date (Due Date").

16 **4.2** DEFENDANTS shall make the Periodic Payments by wire transfer to ERC's  
17 account, for which ERC will give DEFENDANTS the necessary account information. The  
18 Total Settlement Amount shall be apportioned as follows:

19 **4.3** \$25,000.00 shall be considered a civil penalty pursuant to California Health and  
20 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$18,750.00) of the civil penalty to  
21 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
22 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
23 Code section 25249.12(c). ERC will retain the remaining 25% (\$6,250.00) of the civil penalty.

24 **4.4** \$2,919.96 shall be distributed to ERC as reimbursement to ERC for reasonable  
25 costs incurred in bringing this action.

26 **4.5** \$9,927.50 shall be distributed to Adams Broadwell Joseph & Cardozo as  
27 reimbursement of ERC's attorney's fees, while \$9,154.31 shall be distributed to ERC for its in-  
28 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and

1 costs.

2           **4.6**     In the event that DEFENDANTS fail to remit any of the Periodic Payments  
3 owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date,  
4 DEFENDANTS shall be deemed to be in material breach of their obligations under this  
5 Consent Judgment. ERC shall provide written notice of the delinquency to DEFENDANTS via  
6 electronic mail and regular mail pursuant to Paragraph 11 herein. If DEFENDANTS fail to  
7 deliver the delinquent payment within ten (10) days from the date of delivery of the written  
8 notice, the DEFENDANTS shall be required to pay a late fee, amounting to 10% of the  
9 delinquent payment, in addition to the delinquent payment. If DEFENDANTS fail to deliver  
10 the delinquent payment and late fee, if required, within thirty (30) days from the date of  
11 delivery of the written notice, the Total Settlement Amount, less any amounts previously paid  
12 to ERC, shall be immediately due and owing and shall accrue interest at the statutory judgment  
13 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,  
14 DEFENDANTS agree to pay ERC's reasonable attorney's fees and costs for any efforts to  
15 collect the payment due under this Consent Judgment.

16           **5.     MODIFICATION OF CONSENT JUDGMENT**

17           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
18 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
19 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
20 modified consent judgment.

21           **5.2**     If any Party seeks to modify this Consent Judgment under Section 5.1, then that  
22 Party must provide written notice to the other Party of its intent ("Notice of Intent"). The  
23 Parties shall meet and confer in good faith regarding the proposed modification within sixty  
24 (60) days of the receiving Party's receipt of the Notice of Intent. Within thirty (30) days of the  
25 meet and confer conference, if the Parties are not able to fully resolve the issues regarding the  
26 proposed modification, the Party disputing the modification shall provide the other Party with a  
27 written basis for its position. The Parties shall continue to meet and confer for an additional  
28 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the

1 Parties may agree in writing to different deadlines for the meet-and-confer period.

2       **5.3**     In the event that DEFENDANTS initiate or otherwise request a modification  
3 under Section 5.1, and the meet and confer process leads to a joint motion or application for a  
4 modification of the Consent Judgment, DEFENDANTS shall reimburse ERC its costs and  
5 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and  
6 arguing the motion or application. ERC shall not be reimbursed for costs or attorney’s fees for  
7 an uncontested motion, or for a ministerial motion (such as a change in name or contact  
8 information) or if ERC does not expend more than two (2) hours of attorney time on the joint  
9 motion.

10       **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
11 application in support of a modification of the Consent Judgment, then either Party may seek  
12 judicial relief on its own.

13       **5.5**     In the event that Proposition 65 is repealed, and as a result of such repeal the  
14 Covered Products are no longer subject to Proposition 65, then DEFENDANTS shall have no  
15 further obligation as to injunctive terms pursuant to this Consent Judgment with respect to the  
16 Covered Products.

17       **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
18       **JUDGMENT**

19       **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
20 this Consent Judgment.

21       **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
22 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
23 inform DEFENDANTS in a reasonably prompt manner pursuant to Paragraph 11 herein of its  
24 actual test results ERC received from an independent third party laboratory certified by the  
25 California Environmental Laboratory Accreditation Program or an independent third-party  
26 laboratory that is registered with the United States Food & Drug Administration, including  
27 information sufficient to permit DEFENDANTS to identify the Covered Products at issue, and  
28 of ERC’s calculation of the Daily Lead Exposure Level. DEFENDANTS shall, within thirty

1 (30) days following such notice, provide ERC with testing information, from an independent  
2 third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating  
3 DEFENDANTS' compliance with the Consent Judgment. The Parties shall first attempt to  
4 resolve the matter prior to ERC taking any further legal action.

## 5 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
14 on behalf of itself and in the public interest, and DEFENDANTS and their respective past,  
15 present and future officers, directors, shareholders, employees, agents, representatives,  
16 attorneys, accountants, insurers, receivers, advisors, consultants, partners, third-party vendors,  
17 partnerships, members, divisions, assigns, agents, independent contractors, successors, heirs,  
18 predecessors in interest, joint ventures, commonly-controlled corporations, holding companies,  
19 controlling entities, sister companies, parent companies, subsidiaries, affiliated entities within  
20 the same corporate family or under common ownership, divisions, suppliers, franchisees,  
21 licensees, customers (not including private label customers of DEFENDANTS), distributors,  
22 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
23 of any Covered Product, and related or affiliated companies, subsidiaries, predecessors,  
24 successors, and assigns of any of them (hereinafter collectively referred to as "Released  
25 Parties") with regard to the Covered Products. ERC, on behalf of itself and in the public  
26 interest, hereby fully releases and discharges the Released Parties from any and all claims,  
27 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
28 expenses asserted, or that could have been asserted, from the handling, use, or consumption of

1 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
2 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
3 Products regarding lead up to and including the Effective Date.

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

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

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
21 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
23 DEBTOR OR RELEASED PARTY.

24 ERC on behalf of itself only, and DEFENDANTS on behalf of themselves only, acknowledge  
25 and understand the significance and consequences of this specific waiver of California Civil  
26 Code section 1542.

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

///  
28

1           **8.5**     Nothing in this Consent Judgment is intended to apply to any occupational or  
2 environmental exposures arising under Proposition 65, nor shall it apply to any of  
3 DEFENDANTS' products other than the Covered Products.

4           **9.     SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7           **10.    GOVERNING LAW**

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

10          **11.    PROVISION OF NOTICE**

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

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

15          CHRIS HEPTINSTALL, Executive Director  
16          ENVIRONMENTAL RESEARCH CENTER, INC.  
17          3111 Camino Del Rio North, Suite 400  
18          San Diego, CA 92108  
19          Ph: (619) 500-3090  
20          Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

21          With a copy to:

22          TANYA A. GULESSERIAN  
23          CHRISTINA M. CARO  
24          ADAMS BROADWELL JOSEPH & CARDOZO  
25          601 Gateway Blvd., Suite 1000  
26          South San Francisco, CA 94080-7037  
27          Telephone: (650) 589-1660  
28          Fax No.: (650) 589-5062  
29          Email: [tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
30                 [ccaro@adamsbroadwell.com](mailto:ccaro@adamsbroadwell.com)

31          ///

32          ///

33          ///

1 **FOR REPP SPORTS, LLC; MACROCAP LABS, INC.:**

2 CHRIS WAGNER  
3 MACROCAP LABS, INC.  
4 REPP SPORTS, LLC  
5 975 Bennett Dr  
6 Longwood, Fl 32750  
7 Email: chris@nutrakeyhealth.com

8 and

9 RICHARD D. MCINTYRE  
10 LM ADVISORY GROUP  
11 1540 International Parkway, Suite 2000  
12 Lake Mary, Fl 32746  
13 Telephone: (407) 536-5346  
14 Fax No.: (407) 442-3018  
15 Email: rdm@lm-advisory.com

16 With a copy to:

17 HANY S. FANGARY  
18 FANGARY LAW GROUP  
19 U.S. Bank Tower | 633 West Fifth Street  
20 57th Floor, Suite 5710, Los Angeles, CA 90071  
21 Telephone: (213) 623-3822  
22 Fax: (213) 289-2824  
23 Email: Hany@fangaryl.com

24 **12. COURT APPROVAL**

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

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

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

**13. EXECUTION AND COUNTERPARTS**

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



1     **14. DRAFTING**

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

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

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

15     **16. ENFORCEMENT**

16             ERC may, by motion or order to show cause before the Superior Court of Alameda  
17 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
18 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
19 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

20     **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

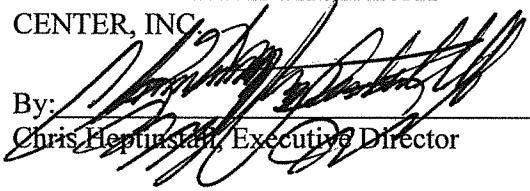
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 **IT IS SO STIPULATED:**

12 Dated: 8/19/, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC.

13  
14 By:   
15 Chris Heptinstall, Executive Director

16  
17 Dated: August 16, 2019

REPP SPORTS, LLC

18 

19 By: Christopher P. Wagner  
20 Its: President

21 Dated: August 16, 2019

MACROCAP LABS, INC.

22 

23 By: Christopher P. Wagner  
24 Its: President  
25  
26  
27  
28

1 APPROVED AS TO FORM:


2 Dated: August 19, 2019

ADAMS BROADWELL JOSEPH &  
CARDOZO

3  
4 By:   
Christina M. Caro  
Attorney for Plaintiff Environmental  
Research Center, Inc.

5  
6  
7  
8 Dated: August 16, 2019

FANGARY LAW GROUP

9  
10   
11 By: \_\_\_\_\_  
Hany S. Fangary  
12 Attorney for Defendants

13  
14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18  
19 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Honorable Brad Seligman  
Judge of the Superior Court

# EXHIBIT A

# 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

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
YAIR CHAVER  
SARA F. DUDLEY  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
MILES F. MAURINO

MARC D. JOSEPH  
*Of Counsel*

March 12, 2019

### VIA CERTIFIED MAIL

Christopher Wagner or Current CEO  
REPP Sports, LLC  
975 Bennett Drive  
Longwood, FL 32750

Christopher Wagner or Current CEO  
MacroCap Labs, Inc.  
975 Bennett Drive  
Longwood, FL 32750

LM Advisory Group, LLC  
(Registered Agent for REPP Sports, LLC)  
1540 International Parkway, Ste 2000  
Lake Mary, FL 32746

Chris Wagner  
(Registered Agent for MacroCap Labs, Inc.)  
975 Bennett Drive  
Longwood, FL 32750

### VIA ONLINE SUBMISSION

Office of the California Attorney General

### VIA ELECTRONIC MAIL

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

### VIA ELECTRONIC MAIL

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San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

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Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator  
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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  
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1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

March 12, 2019

Page 2

**VIA ELECTRONIC MAIL**

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

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Prop65@sacda.org

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San Diego City Attorney  
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San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
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San Francisco, CA 94102  
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222 E. Weber Avenue, Room 202  
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DAConsumer.Environmental@sjcda.org

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San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

**VIA ELECTRONIC MAIL**

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Santa Barbara County  
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701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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**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 names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**REPP Sports, LLC  
MacroCap Labs, Inc.**

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

- 1. Repp Sports Premium Protein Complex Whey+ Vanilla Waffle Cone - Lead**
- 2. Repp Sports Premium Protein Complex Whey+ Tropic O's - Lead**
- 3. Repp Sports Premium Protein Complex Whey+ Funnel Cake - Lead**
- 4. Repp Sports Premium Protein Complex Whey+ Choco-Hoo - Lead**
- 5. Repp Sports High Intensity Pre-Workout Reactr Zap Berry - Lead**
- 6. Repp Sports High Intensity Pre-Workout Reactr Rainbow Burst - Lead**
- 7. Repp Sports High Intensity Pre-Workout Reactr Dragon Fruit - Lead**
- 8. Repp Sports High Intensity Pre-Workout Reactr Blue Magic - Lead**

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of

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

March 12, 2019

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Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. 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 has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since March 12, 2016, 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 Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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 chemical and expensive and time-consuming litigation.

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

Sincerely,



---

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to REPP Sports, LLC, MacroCap Labs, Inc. and their 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 REPP Sports, LLC and MacroCap Labs, Inc.**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: March 12, 2019



---

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 March 12, 2019, 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:

Christopher Wagner or Current CEO  
REPP Sports, LLC  
975 Bennett Drive  
Longwood, FL 32750

LM Advisory Group, LLC  
(Registered Agent for REPP Sports, LLC)  
1540 International Parkway, Ste 2000  
Lake Mary, FL 32746

Christopher Wagner or Current CEO  
MacroCap Labs, Inc.  
975 Bennett Drive  
Longwood, FL 32750

Chris Wagner  
(Registered Agent for MacroCap Labs, Inc.)  
975 Bennett Drive  
Longwood, FL 32750

On March 12, 2019, 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 March 12, 2019, 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  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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

March 12, 2019

Page 7

Stacey Grassini, Deputy District Attorney  
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sgrassini@contracostada.org

Thomas L. Hardy, District Attorney  
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168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

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

Mark Ankorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
March 12, 2019  
Page 8

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

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

On March 12, 2019, 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 March 12, 2019, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

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

March 12, 2019

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**Service List**

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive, Suite 245  
Oroville, CA 95965

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte County  
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Crescent City, CA 95531

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Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Suite 800  
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.

# EXHIBIT B

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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March 28, 2019

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

March 28, 2019

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

March 28, 2019

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**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 names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**REPP Sports, LLC  
MacroCap Labs, Inc.**

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

- 1. Repp Sports Hyper Sleep Performance Sleep Aid Vanilla Soft Serve - Lead**
- 2. Repp Sports Pre-Workout Reactr Dragon Fruit - Lead**
- 3. Repp Sports Pre-Workout Reactr Zap Berry - Lead**
- 4. Repp Sports Pre-Workout Reactr Blue Magic - Lead**
- 5. Repp Sports Pre-Workout Reactr Rainbow Burst - Lead**

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators 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.

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

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The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. 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 has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since March 28, 2016, 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 Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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 chemical and expensive and time-consuming litigation.

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

Sincerely,



---

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to REPP Sports, LLC, MacroCap Labs, Inc. and their 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  
REPP Sports, LLC and MacroCap Labs, Inc.**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: March 28, 2019



---

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 March 28, 2019, 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:

Christopher Wagner or Current CEO  
REPP Sports, LLC  
975 Bennett Drive  
Longwood, FL 32750

LM Advisory Group, LLC  
(Registered Agent for REPP Sports, LLC)  
1540 International Parkway, Ste 2000  
Lake Mary, FL 32746

Christopher Wagner or Current CEO  
MacroCap Labs, Inc.  
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Longwood, FL 32750

Chris Wagner  
(Registered Agent for MacroCap Labs, Inc.)  
975 Bennett Drive  
Longwood, FL 32750

On March 28, 2019, 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 March 28, 2019, 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:

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

March 28, 2019

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

March 28, 2019

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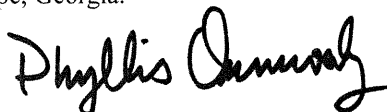
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

On March 28, 2019, 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 March 28, 2019, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

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

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**Service List**

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive, Suite 245  
Oroville, CA 95965

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
778 Pacific St.  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
303 West Third Street  
San Bernardino, CA 92415

District Attorney, San Diego County  
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San Diego, CA 92101

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
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Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

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

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San 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.