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16 Attorneys for Defendant
17 The Isopure Company, LLC
18 (dba Nature's Best, Inc.)

ENDORSED
FILED
San Francisco County Superior Court

JUN 27 2013

CLERK OF THE COURT
BY: KEVIN R. DOUGHERTY
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 ENVIRONMENTAL RESEARCH
15 CENTER, a California non-profit
16 corporation,

17 Plaintiff,

18 v.

19 NATURE'S BEST, INC., THE ISOPURE
20 COMPANY, LLC, and DOES 1-50,
21 inclusive.

22 Defendants.

Case No. CGC-11-513929

~~PROPOSED~~ CONSENT JUDGMENT

23
24
25 **I. INTRODUCTION**

26 1.1 On September 6, 2011, Plaintiff Environmental Research Center ("ERC"), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
28 Complaint for Injunctive Relief and Civil Penalties ("Complaint") pursuant to the provisions of

1 California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
2 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65"),
3 against Defendant The Isopure Company, LLC dba Nature's Best, Inc. ("Isopure"). ERC and
4 Isopure are hereinafter sometimes referred to individually as a "Party" or collectively as the
5 "Parties".

6 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
7 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
8 and toxic chemicals, facilitating a safe environment for consumers and employees, and
9 encouraging corporate responsibility.

10 1.3 Isopure is a Delaware corporation, qualified to do business in the State of
11 California. At all times relevant to this action, Isopure has employed ten or more persons and is a
12 "person in the course of doing business" within the meaning of Proposition 65.

13 1.4 On September 4, 2010, pursuant to California Health and Safety Code
14 § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations")
15 on the California Attorney General, other public enforcers, and Isopure. A true and correct copy
16 of the Notice of Violations is attached hereto as Exhibit A. The Notice of Violations contains
17 allegations that Isopure, without giving a required clear and reasonable warning, has exposed and
18 continues to expose individuals in California to lead, a chemical listed under Proposition 65 as a
19 carcinogen and reproductive toxin, by manufacturing, marketing, distributing and/or selling the
20 following 5 products:

- 21 1) Nature's Best Isopure Apple Melon,
- 22 2) Nature's Best Isopure Pineapple Orange Banana,
- 23 3) Nature's Best Isopure Mango Peach,
- 24 4) Nature's Best Isopure Grape Frost, and
- 25 5) Nature's Best Isopure Blue Raspberry.

26 These five products (including all package sizes of the five products) are hereinafter referred to
27 collectively as the "Covered Products". Neither the California Attorney General nor any other

28 ///

1 public enforcer has filed suit against Isopure with regard to the Covered Products or the alleged
2 violations.

3 1.5 More than 60 days after service of the Notice of Violations, ERC filed the
4 Complaint, which is based on the Notice of Violations and contains allegations that Isopure has
5 exposed and continues to expose persons in California who use and/or handle the Covered
6 Products to the chemical lead in excess of the exposure levels allowed under Proposition 65
7 without first providing clear and reasonable warnings, in violation of California Health and
8 Safety Code § 25249.6. Isopure denies all material allegations contained in the Notice of
9 Violations and the Complaint, asserts numerous affirmative defenses to the allegations of
10 violations, and specifically denies that the Covered Products require Proposition 65 warnings or
11 otherwise harm any person.

12 1.6 The Parties enter into this Consent Judgment in order to settle disputed claims
13 between them and to avoid prolonged and costly litigation.

14 1.7 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
15 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or
16 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
17 construed as giving rise to any presumption or inference of admission or concession or waiver of
18 a defense by Isopure as to any fault, wrongdoing or liability whatsoever, including, but not
19 limited to, any alleged violation of Proposition 65.

20 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall
21 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or
22 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,
23 responsibilities, and duties of any Party to this Consent Judgment.

24 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent
25 Judgment is entered by the Court.

26 1.10 The only products covered by this Consent Judgment are the Covered Products,
27 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
28 Covered Products only.

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that
4 venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment
5 pursuant to the terms set forth herein.

6 **3. INJUNCTIVE RELIEF**

7 **3.1 Reformulation of Covered Product**

8 On and after the Effective Date, Isopure shall be permanently enjoined from
9 manufacturing for sale in California, distributing into California, or directly selling to any
10 consumer located in California any of the Covered Products that have a daily lead exposure rate
11 of more than 0.5 micrograms of lead, calculated using the following formula: micrograms of lead
12 per gram of product, multiplied by grams of product per serving of the product (using the largest
13 serving size appearing on the product label), multiplied by servings of product per day (using the
14 largest recommended number of servings per day appearing on the product label), which equals
15 micrograms of lead exposure per day. The term “distributing into California,” as used herein,
16 means to ship any of the Covered Products into California for sale in California or to sell or
17 provide any of the Covered Products to any person or entity Isopure know intends to or will ship
18 any of the Covered Products into or sell any of the Covered Products in California.

19 **3.2 Testing**

20 (a) Within 30 days of the Effective Date, Isopure shall have tested for lead content
21 three (3) samples of the final product that comprises each of the Covered Products, with samples
22 randomly selected from three (3) different lots (or from the maximum number of lots that are
23 available for testing if there are fewer than three (3) lots available). The testing required under
24 this Section 3.2 will be repeated annually for two years following the compilation of the initial
25 data set. The term “lot,” as used herein, means one manufacturing cycle. Each lot shall be
26 designated by a numbers, letters, or a combination of numbers and letters unique to that lot, and
27 which shall be affixed or printed on each bottle or container of any of the Covered Products in
28 that lot. Each sample to be tested shall be randomly selected using generally accepted practices

1 for random sampling, and shall be identified in Isopure's request to the laboratory for testing as
2 being submitted pursuant to this Consent Judgment.

3 (b) Testing for lead content under Section 3.2 shall be performed using closed-vessel,
4 microwave-assisted acid digestion employing high-purity reagents, followed by Inductively
5 Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of less than or
6 equal to 0.010 mg/kg; or heat-assisted acid digestion employing high-purity reagents, followed
7 by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of
8 quantification of less than or equal to 0.010 mg/kg; or any other testing method agreed upon in
9 writing by the Parties.

10 (c) Testing for lead content under Section 3.2 shall be performed by a laboratory
11 certified by the California Environmental Laboratory Accreditation Program and be experienced
12 in testing for lead levels in foods.

13 (d) Isopure shall retain copies of all laboratory reports with results of testing for lead
14 content under Section 3.2 for a period of two years following the delivery of the test results to
15 Isopure. Isopure agrees to provide ERC with the results of these tests within 30 calendar days of
16 the receipt of ERC's written request delivered by any of the methods set forth in Section 17.
17 These reports shall be deemed and treated as confidential information.

18 (e) Nothing in this Consent Judgment shall limit Isopure's ability to conduct, or
19 require that others conduct, additional testing of the Covered Product, including the raw
20 materials used in their manufacture.

21 (f) The testing and sampling methodology set forth in Section 3.2 is a result of
22 negotiation and compromise, and is accepted by the Parties for the purposes of settling,
23 compromising, and resolving the issues in this Action, including future compliance with Section
24 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except
25 for the purposes of determining future compliance with this Consent Judgment.

26 3.3 Products in the Stream of Commerce

27 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products
28 that Isopure put into the stream of commerce before the Effective Date. Isopure shall provide

1 ERC with the last lot number and expiration date for each of the Covered Products in the stream
2 of commerce on the Effective Date.

3 **4. SETTLEMENT PAYMENT**

4 **4.1 Total Payment**

5 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
6 ERC's expenses and costs of litigation, and ERC's attorney fees, Isopure shall, within 10 days
7 after the Effective Date, issue a single check in the amount of \$110,000 ("Total Settlement
8 Amount"), made payable to "Environmental Research Center – ERC Escrow Account", and send
9 the check by first-class registered or certified mail, or overnight delivery, directly to ERC at the
10 following address:

11 Environmental Research Center
12 3111 Camino del Rio North, Suite 400
13 San Diego, CA 92108

14 Isopure shall also issue a single IRS Federal Tax Form 1099 for the above payment to ERC.
15 Sections 4.2-4.5 below describe the agreed partition of the Total Settlement Amount.

16 **4.2 Civil Penalty**

17 As a portion of the Total Settlement Amount, \$16,000 shall be considered a civil penalty
18 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$12,000)
19 of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for
20 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
21 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to
22 Isopure's counsel. ERC will retain the remaining 25% (\$4,000) of the civil penalty.

23 **4.3 Payment in Lieu of Further Civil Penalties**

24 As a portion of the Total Settlement Amount, \$45,625 shall be considered a payment to
25 ERC in lieu of further civil penalties for activities such as (1) funding the investigating,
26 researching and testing of consumer products that may contain Proposition 65 listed chemicals;
27 (2) funding grants to California non-profit foundations/entities dedicated to public health;
28 (3) funding ERC's Got Lead? Program to assist consumers in testing products for lead content;
(4) funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC's

1 database of lead-free products, Proposition 65-compliant products and contaminated products;
2 (6) funding to track and catalog Proposition 65-compliant, contamination-free sources of
3 ingredients used in the products ERC tests; and (7) funding the continued day to day business of
4 enforcement of Proposition 65 matters which address contaminated ingestible products, similar
5 to the subject matter of this Action.

6 4.4 Reimbursement of Expenses and Costs

7 As a portion of the Total Settlement Amount, \$24,500 shall be considered a
8 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of
9 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this
10 matter to Isopure's attention, litigating and negotiating a settlement in the public interest.

11 4.5 Attorney Fees

12 As a portion of the Total Settlement Amount, \$23,875 shall be considered a
13 reimbursement to ERC for its attorney fees.

14 5. COSTS AND FEES

15 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
16 fees, costs and expenses in this action.

17 6. RELEASE

18 6.1 ERC, acting on its own behalf and in the public interest, releases Isopure, and its
19 respective officers, directors, shareholders, employees, agents, representatives, parents,
20 subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and
21 attorneys, and suppliers, manufacturers, distributors, wholesalers, retailers and all other entities
22 in the distribution chain of the Covered Products excluding private label customers ("Released
23 Parties"), except from all claims for violations of Proposition 65 up through the Effective Date
24 based on exposure to lead from the Covered Products as set forth in the Notice of Violations and
25 the Complaint.

26 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
27 Proposition 65 with respect to exposures to lead from the Covered Products.

28 6.3 ERC on behalf of itself only, on the one hand, and Isopure, on the other hand,

1 release and waive all claims they may have against each other and their respective officers,
2 directors, employees, agents, representatives and attorneys for any statements or actions made or
3 undertaken by them or their respective officers, directors, employees, agents, representatives and
4 attorneys in connection with the Notice of Violations or this action.

5 6.4 Nothing in this release is intended to apply to any occupational or environmental
6 exposures arising under Proposition 65.

7 **7. MOTION FOR COURT APPROVAL**

8 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
9 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
10 Code of Regulations § 3000, *et seq.* This motion shall be served upon Isopure and upon the
11 California Attorney General's Office. Isopure and ERC shall use their best efforts to support
12 entry of this Consent Judgment in the form submitted to the Court for approval.

13 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
14 California Attorney General objects in writing to any term in this Consent Judgment or files an
15 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
16 manner prior to the hearing on the motion. If the concern of the California Attorney General is
17 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
18 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph
19 17 below and notice to the California Attorney General's Office, and upon such notice this
20 Consent Judgment shall be null and void.

21 7.3 This Consent Judgment shall be effective only after it has been entered by the
22 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
23 any purpose.

24 **8. RETENTION OF JURISDICTION**

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

27 **9. MODIFICATION OF CONSENT JUDGMENT**

28 This Consent Judgment after its entry by the Court may be modified only upon written

1 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

2 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
3 **RESOLVE DISPUTES**

4 In the event a dispute arises with respect to any Party's compliance with the terms and/or
5 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of
6 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
7 Party in person, by telephone or by written communication before seeking relief from the Court.
8 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in
9 this Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law.
10 The prevailing party in any such dispute brought to this Court for resolution shall be awarded all
11 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing
12 party" means a party who is successful in obtaining relief more favorable to it than the relief the
13 other party was agreeable to providing during the Parties' good faith attempt to resolve the
14 dispute that is the subject of such an enforcement proceeding.

15 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

16 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
17 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable
18 provisions shall not be adversely affected.

19 **12. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California.

22 **13. RELATION TO OTHER ACTIONS**

23 This Consent Judgment shall have no application or effect on Isopure for the Covered
24 Products or other products distributed or sold by Isopure to consumers outside the State of
25 California.

26 **14. DRAFTING**

27 The terms of this Consent Judgment have been reviewed by the respective legal counsel
28 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the

1 terms and conditions with its legal counsel. The Parties agree that, in any subsequent
2 interpretation or construction of this Consent Judgment, no inference, assumption or presumption
3 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,
4 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
5 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the
6 Parties participated equally in the preparation and drafting of this Consent Judgment.

7 **15. ENTIRE AGREEMENT**

8 This Consent Judgment contains the sole and entire agreement and understanding of the
9 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all
10 prior agreements or understandings, written or oral, with regard to the matters set forth herein.
11 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall
12 be deemed to exist or to bind any of the Parties.

13 **16. EXECUTION IN COUNTERPARTS**

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

17 **17. NOTICES**

18 All notices required by this Consent Judgment to be given to any Party shall be sent by
19 first-class registered or certified mail, or overnight delivery, to the following:

20
21 **FOR ERC:**

22 Chris Heptinstall, Executive Director
23 Environmental Research Center
24 3111 Camino del Rio North, Suite 400
25 San Diego, CA 92108

26 Philip T. Emmons
27 Law Office of Philip T. Emmons
28 1990 North California Blvd., 8th Floor
Walnut Creek, CA 94596-3742

1 Karen A. Evans
2 Law Office of Karen A. Evans
3 4218 Biona Place
4 San Diego, CA 92116

4 **FOR DEFENDANT:**

5 Hal Katz
6 Chief Executive Officer
7 The Isopure Company, LLC
8 195 Engineers Road
9 Hauppauge, NY 11788

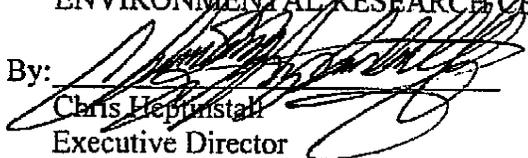
9 William F. Tarantino
10 Morrison & Foerster LLP
11 425 Market Street
12 San Francisco, CA 94105

12 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

13 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is
14 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment
15 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,
16 and to legally bind that Party to this Consent Judgment. Each person signing this Consent
17 Judgment on behalf of a Party represents and warrants that he or she has read and understands
18 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
19 behalf of that Party.

20 **IT IS SO STIPULATED:**

21 Dated: 3/22/2013

ENVIRONMENTAL RESEARCH CENTER
By: 
Chris Hepinstall
Executive Director

25 Dated: _____

26 THE ISOPURE COMPANY, LLC
By: _____
Hal Katz
Chief Executive Officer

1 Karen A. Evans
2 Law Office of Karen A. Evans
3 4218 Biona Place
4 San Diego, CA 92116

4 **FOR DEFENDANT:**

5 Hal Katz
6 Chief Executive Officer
7 The Isopure Company, LLC
8 195 Engineers Road
9 Hauppauge, NY 11788

9 William F. Tarantino
10 Morrison & Foerster LLP
11 425 Market Street
12 San Francisco, CA 94105

12 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

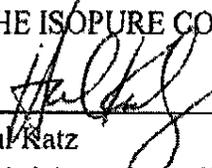
13 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is
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15 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,
16 and to legally bind that Party to this Consent Judgment. Each person signing this Consent
17 Judgment on behalf of a Party represents and warrants that he or she has read and understands
18 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
19 behalf of that Party.

20 **IT IS SO STIPULATED:**

21 Dated: _____ ENVIRONMENTAL RESEARCH CENTER

22 By: _____
23 Chris Heptinstall
24 Executive Director

25 Dated: 3/22/13 _____ THE ISOPURE COMPANY, LLC

26 By:  _____
27 Hal Katz
28 Chief Executive Officer

1 APPROVED AS TO FORM:

2
3 Dated: 3/22/13

LAW OFFICE OF PHILIP T. EMMONS

4
5 By: 

6 Philip T. Emmons
7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER

8 Dated: March 27, 2013

MORRISON & FOERSTER LLP

9
10 By: 

11 William F. Tarantino
12 Attorney for Defendant
13 THE ISOPURE COMPANY, LLC
14 (dba NATURE'S BEST, INC.)

15 **ORDER AND JUDGMENT**

16 Based on the Parties' stipulation, and good cause appearing therefor, this Consent
17 Judgment is approved and judgment is hereby entered according to its terms.

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19
20 Dated: JUN 27 2013

JAMES J. MCBRIDE
21 Judge of the Superior Court

22
23
24
25 EXHIBIT A - [Notice of Violations]

EXHIBIT A

LAW OFFICES OF
ANDREW L. PACKARD

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

September 4, 2010

VIA CERTIFIED MAIL

Current President or CEO
Nature's Best, Inc.
195 Engineers Rd
Hauppauge, NY 11788

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

Dear Sirs,

This firm represents the Environmental Research Center (hereafter, "ERC"), a non-profit corporation organized under California's Non-Profit Public Benefit Corporation Law in connection with this notice of violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as "Proposition 65").

ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety and corporate responsibility. ERC has documented the violations of Proposition 65 described herein, and this letter serves to provide notification of these violations to you and to the public enforcement agencies. Pursuant to §25249.7(d) of the statute, ERC intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator(s).

The names of the violator(s) covered by this notice are: Nature's Best, Inc. (hereafter, the "Violator(s)"). The Violator(s) manufacture, market, distribute and/or sell in California the following products causing exposures to lead and lead compounds:

Nature's Best Isopure Apple Melon
Nature's Best Isopure Pineapple Orange Banana
Nature's Best Isopure Mango Peach
Nature's Best Isopure Grape Frost
Nature's Best Isopure Blue Raspberry

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

EXHIBIT A

September 4, 2010

Page 2

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, consumer exposures have occurred and continue to occur primarily through the ingestion route, but also may occur through the inhalation and/or and dermal contact routes of exposure.

Duration of violations. Each of these ongoing violations has occurred on every day since at least September 4, 2007, 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.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against the Violator(s) unless the Violator(s) agree in an enforceable written instrument to: (1) recall products already sold; (2) take effective measures to prevent unwarned lead exposures from being caused by products sold in the future; and (3) pay an appropriate civil penalty. In keeping with the public interest goals of the statute and my client's objectives in issuing this notice, ERC is interested in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation. ERC's Executive Director is Chris Heptinstall and the organization's mailing address is: 5694 Mission Center Road, #199, San Diego, CA 92108. Tel. (619) 309-4194. However, ERC has retained this firm in connection with this matter; therefore, all communications regarding this Notice of Violation may be directed to my attention at the above-listed firm address and telephone number.

Very Truly Yours,



Andrew L. Packard

Attachments:

OEHHA Summary

Certificate of Merit (w/o AG attachments)

Certificate of Service

List of Service

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

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens. Exposures that will produce

no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

CERTIFICATE OF MERIT

Re: the Environmental Research Center's Notice of Proposition 65 Violations Issued to Nature's Best, Inc.

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §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 has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and 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: September 4, 2010



Andrew L. Packard

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On September 4, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"**

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO
Nature's Best, Inc.
195 Engineers Rd
Hauppauge, NY 11788

On September 4, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT (including supporting documentation required by Title 11 CCR §3102)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On September 4, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 4, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

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

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

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

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

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

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

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

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

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

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

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

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, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center, 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
2222 M 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, Monterey County
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

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

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10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
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Quincy, CA 95971

District Attorney, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1050 Monterey Street, Room 450
San Luis Obispo, CA 93408

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

District Attorney, Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

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

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675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

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Post Office Box 519
Red Bluff, CA 96080

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

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221 S. Mooney Avenue, Room 224
Visalia, CA 93291

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423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113