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16 Attorney for Defendant  
17 NUTRITION CENTER, INC. DBA NUTRI-WEST

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF ALAMEDA

20 ENVIRONMENTAL RESEARCH  
21 CENTER, a California non-profit  
22 corporation,

23 Plaintiff,

24 vs.

25 NUTRITION CENTER, INC. DBA  
26 NUTRI-WEST and DOES 1-100

27 Defendants.

CASE NO. RG13700610

[PROPOSED] STIPULATED  
[PROPOSED] CONSENT JUDGMENT; [PROPOSED]  
ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: October 25, 2013  
Trial Date: None set

28 **1. INTRODUCTION**

1.1 On October 25, 2013, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint")  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
3 ("Proposition 65"), against Nutrition Center, Inc. dba Nutri-West and Does 1-100  
4 (collectively "Nutri-West"). In this action, ERC alleges that the products manufactured,  
5 distributed or sold by Nutri-West, as more fully described below, contain lead, a chemical  
6 listed under Proposition 65 as a carcinogen and reproductive toxin, and that such products  
7 expose consumers at a level requiring a Proposition 65 warning. These products are: Nutri-  
8 West Whole System D-TX; Nutri-West China-West #16 Lonicera Formula; Nutri-West  
9 Parazym-A; Nutri-West #10-FEM; Nutri-West Stress/Pan-F; Nutri-West D-Tox; Nutri-West  
10 Total Fiber; Nutri-West China-West #2 Sino Formula; Nutri-West DIU-Plus; Nutri-West  
11 LIGA-PN; and Nutri-West #15 ILEX Formula (collectively, the "Covered Products"). ERC  
12 and Nutri-West are referred to individually as a "Party" or collectively as the "Parties."

13  
14 1.2 ERC is a California non-profit corporation dedicated to, among other causes,  
15 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
16 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
17 encouraging corporate responsibility.

18 1.3 Nutri-West is a business entity that employed ten or more persons. Nutri-West  
19 manufactures and sells the Covered Products.

20 1.4 The Complaint is based on allegations contained in ERC's Notice of Violation,  
21 dated January 18, 2013 (the "Notice of Violation"), that was served on the California  
22 Attorney General, other public enforcers, and Nutri-West. A true and correct copy of the  
23 Notice of Violation is attached as Exhibit A. More than 60 days have passed since the Notice  
24 of Violation was mailed, and no designated governmental entity has filed a complaint against  
25 Nutri-West with regard to the Covered Products or the alleged violations.  
26  
27  
28

1           1.5 ERC's Notice of Violation and the Complaint allege that use of the Covered  
2 Products exposes persons in California to lead without first providing clear and reasonable  
3 warnings in violation of California Health and Safety Code section 25249.6.

4           1.6 The Parties have entered into this Consent Judgment in order to settle,  
5 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
6 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
7 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
8 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers,  
9 suppliers, distributors, wholesalers, or retailers. Except for the representations made above,  
10 nothing in this Consent Judgment shall be construed as an admission by Nutri-West or ERC  
11 of any fact, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
12 be construed as an admission by Nutri-West or ERC of any fact, issue of law, or violation of  
13 law, at any time, for any purpose.

14           1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall  
15 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
16 any other or future legal proceeding unrelated to these proceedings.

17           1.8 The Effective Date of this Consent Judgment is the date on which it is entered as  
18 a Judgment by this Court.

19  
20 **2. JURISDICTION AND VENUE**

21           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over the allegations of violations contained in the Complaint and personal  
23 jurisdiction over Nutri-West as to the acts alleged in the Complaint, that venue is proper in  
24 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
25 final resolution of all claims which were or could have been asserted in this action based on the  
26 facts alleged in the Notice of Violation and the Complaint.  
27

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

2 **3.1** Beginning on the Effective Date, Nutri-West shall not manufacture for sale in  
3 the State of California, distribute into the State of California, or directly sell in the State of  
4 California, any Covered Products which expose a person to a daily dose of lead more than 0.5  
5 micrograms per day when the maximum suggested dose is taken as directed on the Covered  
6 Product's label, unless each such unit of the Covered Product meets the warning requirements  
7 under Section 3.2. As used in this Consent Judgment, the term "distribute into the State of  
8 California" shall mean to directly ship a Covered Product into California for sale in California  
9 or to sell a Covered Product to a distributor that Defendant knows will sell the Covered  
10 Product in California.

11 **3.2 Clear and Reasonable Warnings**

12 If Nutri-West provides a warning for Covered Products pursuant to Section 3.1, Nutri-West must  
13 provide the following warning:  
14

15 **WARNING: This product contains lead, a chemical known to the State of**

16 **California to cause [cancer and] birth defects or other reproductive harm.**

17 Nutri-West shall use the term "cancer" in the warning only if the maximum daily dose  
18 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
19 the quality control methodology set forth in Section 3.3.

20 Nutri-West shall provide the warning on all Covered Products that Nutri-West ships into  
21 California that when tested in accordance with Section 3.3 have a lead level of more than 0.5  
22 micrograms per day when the maximum suggested dose is taken as directed on the Covered  
23 Product's label. The word "WARNING" shall be in all capital letters and in bold print. No other  
24 statements about Proposition 65 or lead may accompany the warning. Nutri-West shall not  
25 provide any general or "blanket" warning regarding Proposition 65.  
26  
27

1 Nutri-West must display the above warnings with such conspicuousness, as compared with  
2 other words, statements, or design of the label or container, as applicable, to render the warning  
3 likely to be read and understood by an ordinary individual under customary conditions of purchase  
4 or use of the product.

5  
6 **3.3 Calculation of Lead Levels; Testing and Quality Control Methodology**

7 **3.3.1** For purposes of this Consent Judgment, daily lead exposure levels shall  
8 be measured in micrograms, and shall be calculated using the following formula: micrograms  
9 of lead per gram of product, multiplied by grams of product per serving of the product (using  
10 the largest serving size appearing on the product label), multiplied by servings of the product  
11 per day (using the largest number of servings in a recommended dosage appearing on the  
12 product label), which equals micrograms of lead exposure per day.

13 **3.3.2** All testing pursuant to this Consent Judgment shall be performed using a  
14 laboratory method that complies with the performance and quality control factors appropriate  
15 for the method used, including limit of detection, limit of qualification, accuracy, and  
16 precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry  
17 (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other  
18 testing method subsequently agreed upon in writing by the Parties.

19 **3.3.3** All testing pursuant to this Consent Judgment shall be performed by an  
20 independent third-party laboratory certified by the California Environmental Laboratory  
21 Accreditation Program for the analysis of heavy metals or an independent third-party  
22 laboratory that is registered with the United States Food & Drug Administration, or by Nutri-  
23 West. Nutri-West may perform this testing itself only if it provides, in an attachment to the  
24 test results Nutri-West provides to ERC, information or data demonstrating that its laboratory  
25 meets the requirements in Section 3.3.2 and this Section 3.3.3. Nothing in this Consent  
26

1 Judgment shall limit Nutri-West's ability to conduct, or require that others conduct, additional  
2 testing of the Covered Products, including the raw materials used in their manufacture.

3 3.3.4 Nutri-West shall itself conduct or shall arrange, for at least four  
4 consecutive years and at least once per year beginning from the Effective Date, for the lead  
5 testing of five randomly selected samples of each Covered Product in the form intended for  
6 sale to the end-user to be distributed or sold to California. Nutri-West shall continue testing  
7 so long as the Covered Products are sold in California or sold to a third party for retail sale in  
8 California. If tests conducted pursuant to this Section 3.3 demonstrate that no warning is  
9 required for a Covered Product during each of four consecutive years, then the testing  
10 requirements of this Section will no longer be required as to that Covered Product. However,  
11 if after the four-year period, Nutri-West changes ingredient suppliers for any of the Covered  
12 Products and/or reformulates any of the Covered Products, Nutri-West shall test that Covered  
13 Product at least once after such change is made, and send those test results to ERC within 10  
14 working days of receiving the test results. The testing requirements discussed in Section 3.3  
15 are not applicable to any Covered Product for which Nutri-West has provided the warning as  
16 specified in Section 3.2.  
17

18 3.3.5 Once per year, beginning from the Effective Date and continuing for a  
19 period of five years thereafter, Nutri-West shall arrange for copies of all laboratory reports  
20 with results of testing for lead content under Section 3.3 to be automatically sent by the  
21 testing laboratory directly to ERC within ten working days after completion of that testing.  
22 These reports shall be deemed and treated by ERC as confidential information under the terms  
23 of the confidentiality agreement entered into by the Parties. Nutri-West shall retain all test  
24 results and documentation for a period of two (2) years past the date of each test.  
25  
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28



1 consent to the proposed modification. If a proposed modification is agreed upon, then the  
2 Parties will present the modification to the Court by means of a stipulated modification to the  
3 Consent Judgment. Grounds for considering a modification shall include any that are  
4 permitted by law.

5       **5.3** In the event that Nutri-West initiates or otherwise requests a modification  
6 under Section 5.1, Nutri-West shall reimburse ERC its costs and reasonable attorney's fees for  
7 the time spent in the meet-and-confer process and filing and arguing a joint motion or  
8 application in support of a modification of the Consent Judgment.

9       **5.4** Where the meet-and-confer process does not lead to a joint motion or  
10 application in support of a modification of the Consent Judgment, then either Party may seek  
11 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs  
12 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
13 means a party who is successful in obtaining relief more favorable to it than the relief that the  
14 other party was amenable to providing during the Parties' good faith attempt to resolve the  
15 dispute that is the subject of the modification.  
16

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  
20 terminate this Consent Judgment.

21       **6.2** Only after it complies with Section 15 below may any Party, by motion or  
22 application for an order to show cause filed with this Court, enforce the terms and conditions  
23 contained in this Consent Judgment.

24       **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
25 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
26 inform Nutri-West in a reasonably prompt manner of its test results, including information  
27

1 sufficient to permit Nutri-West to identify the Covered Products at issue. Nutri-West shall,  
2 within thirty days following such notice, provide ERC with testing information, from an  
3 independent third-party laboratory meeting the requirements of Sections 3.3.2 and 3.3.3,  
4 demonstrating Defendant's compliance with the Consent Judgment, if warranted. The Parties  
5 shall first attempt to resolve the matter prior to ERC taking any further legal action.

6 **7. APPLICATION OF CONSENT JUDGMENT**

7 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
8 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
9 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
10 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have  
11 no application to Covered Products which are distributed or sold exclusively outside the State of  
12 California. This Consent Judgment shall terminate without further action five (5) years after the  
13 Effective Date.  
14

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
17 on behalf of itself and in the public interest, and Nutri-West, of any alleged violation of  
18 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings  
19 of exposure to lead from the handling, use, or consumption of the Covered Products and fully  
20 resolves all claims that have been or could have been asserted in this action up to and  
21 including the Effective Date for failure to provide Proposition 65 warnings for the Covered  
22 Products. ERC, on behalf of itself and in the public interest, hereby discharges Nutri-West  
23 and its respective officers, directors, shareholders, employees, agents, parent companies,  
24 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not including  
25 private label customers of Nutri-West), distributors, wholesalers, retailers, and all other  
26  
27

1 upstream and downstream entities in the distribution chain of any Covered Product, and the  
2 predecessors, successors and assigns of any of them (collectively, the "Released Parties"),  
3 from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
4 penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged  
5 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the  
6 Covered Products regarding lead as set forth in the Notice of Violation and the Complaint.

7       **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released  
8 Parties from all known and unknown claims for alleged violations of Proposition 65 arising  
9 from or relating to alleged exposures to lead in the Covered Products as set forth in the Notice  
10 of Violation. It is possible that other claims not known to the Parties arising out of the facts  
11 alleged in the Notice of Violation or the Complaint and relating to the Covered Products will  
12 develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent  
13 Judgment is expressly intended to cover and include all such claims, including all rights of  
14 action therefore. ERC has full knowledge of the contents of California Civil Code section  
15 1542. ERC, on behalf of itself only, acknowledges that the claims released in Sections 8.1  
16 and 8.2 above may include unknown claims, and nevertheless waives California Civil Code  
17 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as  
18 follows:  
19

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

25 ERC, on behalf of itself only, acknowledges and understands the significance and  
26 consequences of this specific waiver of California Civil Code Section 1542.  
27

1           8.3     Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures  
3 to lead in the Covered Products as set forth in the Notice of Violation and the Complaint.

4           8.4     Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65, nor shall it apply to any of Nutri-  
6 West's products other than the Covered Products.

7           8.5     ERC and Nutri-West each release and waive all claims they may have against  
8 each other for any statements or actions made or undertaken by them in connection with the  
9 Notice of Violation or the Complaint; provided, however, that nothing in Section 8 shall  
10 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

11           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

12           In the event that any of the provisions of this Consent Judgment is held by a court to be  
13 unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
14 affected.

15           **10. GOVERNING LAW**

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

18           **11. PROVISION OF NOTICE**

19           All notices required to be given to either Party to this Consent Judgment by the other shall be in  
20 writing and sent to the following agents listed below by: (a) first-class, registered, or certified  
21 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

22           **FOR ENVIRONMENTAL RESEARCH CENTER:**

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

1 With a copy to:

2 Michael Freund SBN 99687  
3 Ryan Hoffman SBN 283297  
4 Michael Freund & Associates  
5 1919 Addison Street, Suite 105  
6 Berkeley, CA 94704  
7 Telephone: (510) 540-1992  
8 Facsimile: (510) 540-5543

9 **FOR NUTRITION CENTER, INC. DBA NUTRI-WEST**

10 Current President or CEO  
11 Nutrition Center, Inc. (dba Nutri-West)  
12 PO Box 950  
13 Douglas, WY 82633

14 With a copy to:

15 Dennis M. Gronek  
16 Gronek & Associates  
17 93rd Floor-Willis Tower  
18 Chicago, Illinois 60606  
19 Tel: (312) 655-1800  
20 Fax: (312) 655-1808

21 **12. COURT APPROVAL**

22 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
23 void and have no force or effect.

24 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)  
25 and with Title II of the California Code Regulations, Section 3003.

26 **13. EXECUTION AND COUNTERPARTS**

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

1     **14. DRAFTING**

2     The terms of this Consent Judgment have been reviewed by the respective counsel for the each  
3     Party to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss  
4     the terms with counsel. The Parties agree that, in any subsequent interpretation and construction  
5     of this Consent Judgment entered thereon, the terms and provisions shall not be construed  
6     against any Party.  
7

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

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

14    **16. ENTIRE AGREEMENT, AUTHORIZATION**

15         **16.1** This Consent Judgment contains the sole and entire agreement and  
16    understanding of the Parties with respect to the entire subject matter herein, and any and all  
17    prior discussions, negotiations, commitments and understandings related hereto. No  
18    representations, oral or otherwise, express or implied, other than those contained herein have  
19    been made by any Party. No other agreements, oral or otherwise, unless specifically referred  
20    to herein, shall be deemed to exist or to bind any Party.  
21

22         **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
23    authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
24    explicitly provided herein, each Party shall bear its own fees and costs.  
25

26    **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
27         **CONSENT JUDGMENT**

28    This Consent Judgment has come before the Court upon the request of the Parties. The Parties

request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

- (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and
- (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

**IT IS SO STIPULATED:**

Dated: 12/20, 2013

ENVIRONMENTAL RESEARCH CENTER

By: [Signature]  
Chris Henshaw, Executive Director

Dated: 12/27, 2013

NUTRITION CENTER, INC. DBA NUTRI-WEST

By: [Signature]

**APPROVED AS TO FORM:**

Dated: 1/6, 2013

ENVIRONMENTAL RESEARCH CENTER

By: [Signature]  
Michael Freund, SBN 99687  
Counsel for ENVIRONMENTAL RESEARCH CENTER

Dated: 1/6, 2013

NUTRITION CENTER, INC. DBA  
NUTRI-WEST

By: *Dennis M. Gronek*

Dennis M. Gronek  
Counsel for NUTRITION CENTER,  
INC. DBA NUTRI-WEST

**JUDGMENT**

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

Dated: \_\_\_\_\_, 2013

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

**MICHAEL FREUND**  
ATTORNEY AT LAW  
1919 Addison Street, Suite 105  
BERKELEY, CALIFORNIA 94704-101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

January 18, 2013

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Nutrition Center, Inc. (dba Nutri-West)**

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

- Nutri-West Whole System D-TX – Lead
- Nutri-West China-West #16 Lonicera Formula – Lead
- Nutri-West Parazym-A – Lead
- Nutri-West #10-FEM – Lead
- Nutri-West Stress/Pan-F – Lead
- Nutri-West D-Tox – Lead
- Nutri-West Total Fiber – Lead
- Nutri-West China-West #2 Sino Formula – Lead
- Nutri-West DIU-Plus – Lead
- Nutri-West LIGA-PN – Lead
- Nutri-West #15 ILEX Formula – Lead

EXHIBIT A

January 18, 2013

Page 2

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

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

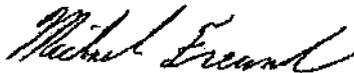
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 18, 2010, as well as every day since the products were introduced into the California marketplace, and will continue every day until the Violator provides clear and reasonable warnings to product purchasers and users or until these known toxic chemicals are either removed from the products or reduced to allowable levels. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that those persons are being exposed to these chemicals.

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

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

Sincerely,



---

Michael Freund

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutrition Center, Inc., dba Nutri-West, and their Registered Agent)

Additional Information Supporting Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Nutrition Center, Inc. (dba Nutri-West)**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-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.

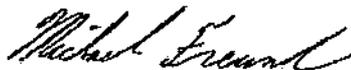
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

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

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

Dated: January 18, 2013



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Michael Freund

**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. 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 January 18, 2013, 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 the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Paul A. White, Current President or CEO  
Nutrition Center, Inc. (dba Nutri-West)  
2132 E. Richards Street  
Douglas, WY 82633

Paul A. White, Registered Agent of Nutrition Center, Inc. (dba Nutri-West)  
Airport Strip  
PO Box 6  
Douglas, WY 82633

Current President or CEO  
Nutrition Center, Inc. (dba Nutri-West)  
PO Box 950  
Douglas, WY 82633

On January 18, 2013, I served the following documents: **NOTICE OF VIOLATION, 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)** 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 at a U.S. Postal Service Office with the postage fully prepaid 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 January 18, 2013, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on January 18, 2013, in Fort Oglethorpe, Georgia.



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Amber Schaub

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

January 18, 2013

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Service List

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Imperial County  
940 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, Suite 18000  
Los Angeles, CA 90012

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

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3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

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Mariposa, CA 95338

District Attorney, Mendocino County  
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Ukiah, CA 95482

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

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Alturas, CA 96101-4020

District Attorney, Mono County  
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Bridgeport, CA 93517

District Attorney, Monterey County  
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Napa, CA 94559

District Attorney, Nevada County  
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Nevada City, CA 95959

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401 West Civic Center Drive  
Santa Ana, CA 92701

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Quincy, CA 95971

District Attorney, Riverside County  
3960 Orange Street  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814

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

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

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222 E. Weber Ave. Rm. 202  
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San Luis Obispo, CA 93408

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1112 Santa Barbara Street  
Santa Barbara, CA 93101

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Santa Cruz, CA 95060

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Yreka, CA 96097

District Attorney, Solano County  
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Santa Rosa, CA 95403

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District Attorney, Trinity County  
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Weaverville, CA 96093

District Attorney, Tulare County  
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Ventura, CA 93009

District Attorney, Yolo County  
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Woodland, CA 95695

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

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Los Angeles, CA 90012

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San Diego, CA 92101

San Francisco, City Attorney  
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San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16<sup>th</sup> Floor  
San Jose, CA 95113