

FILED BY FAX
 ALAMEDA COUNTY
 May 27, 2015
 CLERK OF
 THE SUPERIOR COURT
 By Burt Moskaira, Deputy
 CASE NUMBER:
RG15771826

1 WILLIAM F. WRAITH, SBN 185927
 WRAITH LAW
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 Laguna Hills, CA 92653
 3 Tel: (949) 452-1234
 Fax: (949) 452-1102
 4 Attorneys for Plaintiff
 5 ENVIRONMENTAL RESEARCH CENTER, INC.

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 7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF ALAMEDA

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 11 ENVIRONMENTAL RESEARCH CENTER,
 INC., a non-profit California corporation,
 12 Plaintiff,
 13 v.
 14 NUTRIVO, LLC, individually and doing
 15 business as RIVALUS and RIVALUS, INC.
 and DOES 1-25, Inclusive,
 16 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
 RELIEF AND CIVIL PENALTIES**

[Health & Safety Code § 25249.5, et seq.]

**[UNLIMITED CIVIL CASE - AMOUNT
 DEMANDED EXCEEDS \$25,000]**

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 18 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this
 19 action in the interests of the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendants NUTRIVO, LLC,
 22 individually and doing business as RIVALUS and RIVALUS, INC. (collectively
 23 "DEFENDANTS") to warn consumers in California that they are being exposed to lead or
 24 cadmium, substances known to the State of California to cause cancer, birth defects, and other
 25 reproductive harm. DEFENDANTS manufacture, package, distribute, market, and/or sell in
 26 California the following products containing lead or cadmium (collectively, the

1 “PRODUCTS”):

2 A. Rivalus Inc. The AP Kit

3 **** (*kit contains the below products*)

4 a. Rivalus Inc. The AP Kit Alert Clinical Strength

5 b. Rivalus Inc. The AP Kit Pulse Clinical Strength

6 B. Rivalus Inc. (A Nutrivo Company) Enpulse

7 C. Rivalus Inc. (A Nutrivo Company) Shortcutz

8 D. Rivalus (A Nutrivo Company) Last Meal Smooth Vanilla

9 E. Rivalus (A Nutrivo Company) Clean Gainer Chocolate Fudge

10 2. Lead and Cadmium (hereinafter, the “LISTED CHEMICALS”) are substances
11 known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.

12 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
13 CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe
14 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)
15 §25249.5, *et seq.* (also known as “Proposition 65”). DEFENDANTS have failed to provide the
16 health hazard warnings required by Proposition 65.

17 4. DEFENDANTS’ past sales and continued manufacturing, packaging, distributing,
18 marketing and/or sales of the PRODUCTS without the required health hazard warnings, cause
19 individuals to be involuntarily and unknowingly exposed to levels of the LISTED
20 CHEMICALS that violate Proposition 65.

21 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANTS from the continued
22 manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in
23 California without provision of clear and reasonable warnings regarding the risks of cancer,
24 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICALS

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¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order
2 compelling DEFENDANTS to bring their business practices into compliance with Proposition
3 65 by providing a clear and reasonable warning to each individual who has been and who in
4 the future may be exposed to the LISTED CHEMICALS from the use of the PRODUCTS.
5 PLAINTIFF also seeks an order compelling DEFENDANTS to identify and locate each
6 individual person who in the past has purchased the PRODUCTS, and to provide to each such
7 purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures
8 to the LISTED CHEMICALS.

9 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil penalties
10 up to the maximum civil penalty of \$2,500 per day per exposure authorized by Proposition 65
11 to remedy DEFENDANTS' failure to provide clear and reasonable warnings regarding
12 exposures to the LISTED CHEMICALS.

13 **JURISDICTION AND VENUE**

14 7. This Court has jurisdiction over this action pursuant to California Constitution
15 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
16 except those given by statute to other trial courts." The statute under which this action is
17 brought does not specify any other basis for jurisdiction.

18 8. This Court has jurisdiction over DEFENDANTS because, based on information and
19 belief, DEFENDANTS are businesses having sufficient minimum contacts with California, or
20 otherwise intentionally availing themselves of the California market through the distribution
21 and sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over
22 them by the California courts consistent with traditional notions of fair play and substantial
23 justice.

24 9. Venue in this action is proper in the Alameda Superior Court because the
25 DEFENDANTS have violated California law in the County of Alameda.

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PARTIES

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2 10. PLAINTIFF is a non-profit corporation organized under California's Corporation
3 Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and
4 toxic substances, consumer protection, worker safety, and corporate responsibility.

5 11. ERC is a person within the meaning of H&S Code §25118 and brings this
6 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

7 12. Defendant NUTRIVO, LLC, individually and doing business as RIVALUS
8 and is a business of unknown form, which ERC alleges on information and belief is a
9 person within the meaning of H&S Code §25249.11(a).

10 13. Defendant NUTRIVO, INC., is a business of unknown form, which ERC
11 alleges on information and belief is a person within the meaning of H&S Code
12 §25249.11(a).

13 14. Each Defendant manufactured, packaged, distributed, marketed, sold and/or has
14 otherwise been involved in the chain of commerce, and continues to manufacture, package,
15 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
16 THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that
17 each Defendant employs ten or more persons, and is thus each a "person in the course of doing
18 business" within the meaning of Proposition 65.

19 15. Defendants DOES 1-25 are named herein under fictitious names, as their true
20 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
21 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
22 has otherwise been involved in the chain of commerce of, and continues to manufacture,
23 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
24 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
25 actionable manner, for the events and happenings referred to herein, either through its conduct
26 or through the conduct of its agents, servants or employees, or in some other manner, causing

1 the harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
2 names and capacities of DOES when ascertained.

3 16. Plaintiff is informed and believes and thereon alleges that each Defendant is in
4 some manner responsible for the events set forth in this Complaint and proximately caused the
5 injuries and damages to Plaintiff as alleged in this Complaint.

6 **STATUTORY BACKGROUND**

7 17. The People of the State of California have declared in Proposition 65 their right
8 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
9 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

10 18. To effect this goal, Proposition 65 requires that individuals be provided with a
11 "clear and reasonable warning" before being exposed to substances listed by the State of
12 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
13 part:

14 No person in the course of doing business shall knowingly and intentionally
15 expose any individual to a chemical known to the state to cause cancer or
reproductive toxicity without first giving clear and reasonable warning to such
individual....

16 19. Proposition 65 provides that any person "violating or threatening to violate" the
17 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase
18 "threatening to violate" is defined to mean creating "a condition in which there is a substantial
19 likelihood that a violation will occur." (H&S Code §25249.11(e)). Violators are liable for civil
20 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

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FACTUAL BACKGROUND

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2 20. On February 27, 1987, the State of California officially listed the chemical lead as a
3 chemical known to cause reproductive toxicity. Lead became subject to the warning
4 requirement one year later and was therefore subject to the “clear and reasonable” warning
5 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
6 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
7 level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity. (27 CCR
8 § 25805(b).)

9 21. On October 1, 1992, the State of California officially listed the chemicals lead and
10 lead compounds as chemicals known to cause cancer. Lead and lead compounds became
11 subject to the warning requirement one year later and were therefore subject to the “clear and
12 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
13 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
14 significant risk level for lead is 15 ug/day (micrograms a day). (27 CCR § 25705(b)(1).)

15 22. On May, 1, 1997, the State of California officially listed the chemical cadmium as a
16 chemical known to cause reproductive toxicity. Cadmium became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable” warning
18 requirements of Proposition 65 beginning on May 1, 1998. (27 CCR § 25000, *et seq.*; H&S
19 Code §25249.5, *et seq.*). Due to the high toxicity of cadmium, the maximum allowable dose
20 level for cadmium is 4.1 ug/day (micrograms a day) for reproductive toxicity. (27 CCR
21 § 25805(b).)

22 23. On October 1, 1987, the State of California officially listed the chemicals cadmium
23 and cadmium compounds as chemicals known to cause cancer. Cadmium and cadmium
24 compounds became subject to the warning requirement one year later and were therefore
25 subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on
26 October 1, 1988 (27 CCR § 25000, *et seq.*; H&S Code §25249.6 *et seq.*).

1 24. On February 13, 2015, PLAINTIFF sent a 60-Day Notice of Proposition 65
2 (“Notice”) violations to the requisite public enforcement agencies, and to DEFENDANTS.
3 The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code
4 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to
5 be given to certain public enforcement agencies and to the violators. A true and correct copy of
6 the 60-Day Notice is attached hereto as **Exhibit A** and incorporated by reference .The Notice
7 was issued as follows:

- 8 a. DEFENDANTS and the California Attorney General were provided copies
9 of the Notices of Violations, along with a Certificates of Merit by the
10 attorney for the noticing party stating that there is a reasonable and
11 meritorious cause for this action. The requisite county district attorneys and
12 city attorneys were provided copies of the Notices of Violations and
13 Certificates of Merit.
- 14 b. DEFENDANTS were provided with the Notices of Violations, a copy of a
15 document entitled “The Safe Drinking Water and Toxic Enforcement Act of
16 1986 (Proposition 65): A Summary,” which is also known as Appendix A to
17 Title 27 of CCR § 25903.
- 18 c. The California Attorney General was provided, with the Notices of
19 Violations, additional factual information sufficient to establish a basis for
20 the Certificates of Merit, including the identity of the persons consulted with
21 and relied on by the certifier, and the facts, studies, or other data reviewed
22 by those persons, pursuant to H&S Code §§25249.7(d)(1) and
23 25249.7(h)(2).

24 25. At least 60-days have elapsed since PLAINTIFF sent the Notice to
25 DEFENDANTS. The appropriate public enforcement agencies have failed to commence and
26 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against

1 DEFENDANTS based on the allegations herein.

2 26. Plaintiff is informed and believes, and based on such information and belief, alleges
3 the PRODUCTS have been marketed, distributed and/or sold to individuals in California
4 without the requisite clear and reasonable warnings before, on, and after February 13, 2012.
5 The PRODUCTS continue to be marketed, distributed and sold in California without the
6 requisite warning information.

7 27. As a proximate result of acts by Defendants, as a person in the course of doing
8 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
9 California, including in the County of Alameda, have been exposed to lead without clear and
10 reasonable warnings. The individuals subject to exposures to lead or cadmium include normal
11 and foreseeable users of the PRODUCTS, as well as all other persons exposed to the
12 PRODUCTS.

13 28. At all times relevant to this action, Defendants have knowingly and intentionally
14 exposed the users and/or handlers of the PRODUCTS to lead or cadmium without first giving
15 clear and reasonable warnings to such individuals.

16 29. Individuals using or handling the PRODUCTS are exposed to lead or cadmium in
17 excess of the "maximum allowable daily" and "no significant risk" levels determined by the
18 State of California, as applicable.

19 30. At all times relevant to this action, each Defendant has, in the course of doing
20 business, failed to provide individuals using and/or handling the PRODUCTS with clear and
21 reasonable warnings that the PRODUCTS expose individuals to lead or cadmium.

22 31. The PRODUCTS continue to be marketed, distributed, and/or sold in California
23 without the requisite clear and reasonable warnings.

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FIRST CAUSE OF ACTION
(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.*)

32. PLAINTIFF hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

33. By committing the acts alleged in this Complaint, DEFENDANTS, at all times relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICALS, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

34. By the above-described acts, DEFENDANTS have violated H&S Code § 25249.6 and are therefore subject to an injunction ordering DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to DEFENDANTS' past customers who purchased or used the PRODUCTS without receiving a clear and reasonable warning.

35. An action for injunctive relief under Proposition 65 is specifically authorized by Health & Safety Code §25249.7(a).

36. Continuing commission by DEFENDANTS of the acts alleged above will irreparably harm the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

37. Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth hereafter.

SECOND CAUSE OF ACTION
(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.*)

38. PLAINTIFF hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

1 39. By committing the acts alleged in this Complaint, DEFENDANTS at all times
2 relevant to this action, and continuing through the present, have violated H&S Code §25249.6
3 by, in the course of doing business, knowingly and intentionally exposing individuals who use
4 or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICALS, without first
5 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
6 25249.6 and 25249.11(f).

7 40. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
8 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to
9 the LISTED CHEMICALS from the PRODUCTS.

10 41. Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
11 hereafter.

12 **THE NEED FOR INJUNCTIVE RELIEF**

13 42. PLAINTIFF hereby incorporates by reference each and every preceding allegation
14 and paragraph as though fully set forth in this cause of action.

15 43. By committing the acts alleged in this Complaint, DEFENDANTS have caused
16 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
17 of equitable relief, Defendants will continue to create a substantial risk of irreparable injury by
18 continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
19 CHEMICALS through the use and/or handling of the PRODUCTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff prays for the following relief against Defendants NUTRIVO,
22 LLC, individually and doing business as RIVALUS and RIVALUS, INC.:

23 A. A preliminary and permanent injunction enjoining the Defendants, each of
24 its agents, employees, assigns and all persons acting in concert or participating with each
25 Defendant, from manufacturing, packaging, distributing, marketing and/or selling THE
26 PRODUCTS for sale or use in California without first providing clear and reasonable
warnings, within the meaning of Proposition 65, that the users and/or handlers of THE

1 PRODUCTS are exposed to the lead;

2 B. An assessment of civil penalties against each Defendant, pursuant to
3 Health & Safety Code §25249.7(b), in the amount of \$2,500 per day for each violation of
4 Proposition 65;

5 C. An award to Plaintiff of its reasonable attorney fees pursuant to California
6 Code of Civil Procedure §1021.5 or the substantial benefit theory;

7 D. An award of costs of suit herein; and

8 E. Such other and further relief as may be just and proper.

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10 Dated: May 27, 2015

WRAITH LAW

William F. Wraith

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12 By: _____

13 WILLIAM F. WRAITH
14 Attorney for Plaintiff Environmental
15 Research Center
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Exhibit A

WRAITH LAW

24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

February 13, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Nutrivo, LLC, individually and doing business as Rivalus
Rivalus Inc.**

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

1. **Rivalus Inc. The AP Kit – Lead**
**** (*kit contains the below products*)
 - a. **Rivalus Inc. The AP Kit Alert Clinical Strength**
 - b. **Rivalus Inc. The AP Kit Pulse Clinical Strength**
2. **Rivalus Inc. (A Nutrivo Company) Enpulse- Lead**
3. **Rivalus Inc. (A Nutrivo Company) Shortcutz - Lead**
4. **Rivalus (A Nutrivo Company) Last Meal Smooth Vanilla - Lead**
5. **Rivalus (A Nutrivo Company) Clean Gainer Chocolate Fudge- Cadmium**

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

February 13, 2015

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the 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 February 13, 2012, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

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

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutrivo, LLC, individually and doing business as Rivalus, Rivalus Inc., and each Registered Agent for Service of Process only)

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

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

February 13, 2015

Page 3

CERTIFICATE OF MERIT

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

I, William F. Wraith, 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.

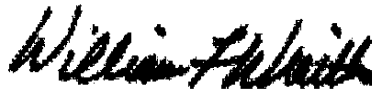
2. I am an attorney for the noticing party.

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 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: February 13, 2015



William F. Wraith

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

February 13, 2015

Page 4

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 February 13, 2015, 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 party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Nutrivo, LLC, individually and doing
business as Rivalus
1785 North Edgelawn Drive
Aurora, IL 60506

Kenneth Clingen
(Registered Agent for Nutrivo, LLC,
individually and doing business as Rivalus)
2100 Manchester Road, Suite 1750
Wheaton, IL 60187

Current President or CEO
Rivalus Inc.
1785 North Edgelawn Drive
Aurora, IL 60506

The Corporation Trust Company
(Registered Agent for Nutrivo, LLC,
individually and doing business as Rivalus)
1209 Orange Street
Wilmington, DE 19801

Current President or CEO
Rivalus Inc.
1083 Queen Street, Suite 189
Halifax, Nova Scotia BCH 0B2
Canada

On February 13, 2015, I electronically served 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)** on the following party by uploading a true and correct copy thereof 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 February 13, 2015, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on February 13, 2015, in Fort Oglethorpe, Georgia.


Tiffany Capehart

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

February 13, 2015

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County Post Office Box 720 Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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's 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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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 and/or reproductive toxicity. This means that 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

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 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" (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 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 a 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 a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering 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 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.

² 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 the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action 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 to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.