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2 Law Office of Michael Freund  
3 1919 Addison Street, Suite 105  
4 Berkeley, CA 94704  
5 Telephone: (510) 540-1992  
6 Facsimile: (510) 540-5543

7 Attorney for Plaintiff Environmental Research Center

**FILED**

**JUN 05 2012**

**KIM TURNER, Court Executive Officer**  
**MARIN COUNTY SUPERIOR COURT**  
*By: D. Taylor, Deputy*

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF MARIN**

11 **ENVIRONMENTAL RESEARCH CENTER,**  
12 **a California non-profit corporation**

13 **Plaintiff,**

14 **v.**

15  
16 **VMI NUTRITION, INC. and MEDICAL**  
17 **RESEARCH INSTITUTE and DOES 1-100**

18 **Defendants.**  
19 \_\_\_\_\_/

Case No. *C101202584*

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND  
CIVIL PENALTIES**

[Miscellaneous Civil Complaint (42)]  
Proposition 65, Health & Safety Code  
Section 25249.5 et seq.]

20 Plaintiff Environmental Research Center hereby alleges:

21  
22 **I**

23 **INTRODUCTION**

24  
25 1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this  
26 action as a private attorney general enforcer and in the public interest pursuant to Health & Safety  
27 Code Section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties  
28 to remedy the failure of VMI Nutrition, Inc. and Medical Research Institute ("Defendants") to warn

1 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint  
2 to set forth the same.

### 3 4 **III**

#### 5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10 because  
7 this case is a cause not given by statute to other trial courts.

8 6. The Complaint is based on allegations contained in Notices of Violation against VMI dated  
9 November 5, 2010 and January 14, 2011, and a Notice of Violation against MRI dated July 9,  
10 2010 served on the California Attorney General, other public enforcers and Defendants. A true  
11 and correct copy of these Notices of Violation is attached hereto as Exhibit A. More than 60-  
12 days have passed since these Notices of Violation were mailed and no public enforcement entity  
13 has filed a complaint against Defendants with regard to the Covered Products or the alleged  
14 violations. On September 24, 2010, ERC withdrew the product named No2 Charger Chocolate  
15 Blast from the July 9, 2010 Notice of Violation against MRI.  
16  
17

18 7. This Court is the proper venue for the action because the causes of action have arisen in the  
19 County of Marin where some of the violations of law have occurred. Furthermore, this Court is the  
20 proper venue under Code of Civil Procedure Section 395.5 and Health & Safety Code Section  
21 25249.7.  
22

### 23 **IV**

#### 24 **STATUTORY BACKGROUND**

##### 25 **A. Proposition 65**

26 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as  
27 “Proposition 65” by an overwhelming majority vote of the people in November of 1986.  
28

1 9. The warning requirement of Proposition 65 is contained in Health & Safety Code Section  
2 25249.6, which provides:

3  
4 No person in the course of doing business shall knowingly and intentionally expose any  
5 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
6 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

7  
8 10. Implementing regulations for Proposition 65 provide that warnings are required for consumer  
9 product exposures. A “consumer product exposure is an exposure which results from a person’s  
10 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
11 good, or any exposure that results from receiving a consumer service.” 27 CCR Section 25601 (b).

12  
13 11. Whenever a clear and reasonable warning is required under Health & Safety Code Section  
14 25249.6, the “method employed to transmit the warning must be reasonably calculated considering  
15 the alternative methods available under the circumstances, to make the warning message available  
16 prior to exposure.” 27 CCR Section 25601. The warning requirement may be satisfied by a  
17 warning that appears on a product’s label or other labeling, shelf labeling, signs, a system of signs,  
18 public advertising identifying the system and toll-free information services, or any other, system,  
19 that provides clear and reasonable warnings. Id., Section 25603.1 (a) – (d).

20  
21 12. Proposition 65 establishes a procedure by which the State is to develop a list of  
22 chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Safety Code  
23 Section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after  
24 the chemical was published on the State list. Id., Section 25249.10 (b). Lead was listed as a  
25 chemical known to the State of California to cause developmental toxicity and male and female  
26 reproductive toxicity on February 27, 1987. Lead was listed as a chemical known to the State of  
27 California to cause cancer on October 1, 1992. Title 27, Cal. Code Regs., Section 27001.

28 13. Proposition 65 may be enforced by any person in the public interest who provides notice

1 sixty days before filing suit to both the violator and designated law enforcement officials. The  
2 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed  
3 pursuant to Health & Safety Code Section 25249.7 (c).  
4

5 14. Proposition 65 provides that any person “violating or threatening to violate” Proposition 65  
6 may be enjoined in any court of competent jurisdiction. Health & Safety Code Section 25249.7 (a).  
7 To “threaten to violate” means “to create a condition in which there is a substantial probability that a  
8 violation will occur.” Id., Section 25249.11 (e). Furthermore, violators are subject to a civil penalty  
9 of up to \$2,500 per day for each violation. Id., Section 25249.7 (b).  
10

11 **V**

12 **STATEMENT OF FACTS**

13 15. Defendants have manufactured, distributed and/or sold the following products  
14 containing lead to the State of California: MRI No2 Ripcuts Cellular Fat Burn-Grape, Medical  
15 Research Institute War Berry Attack, and MRI Black Powder Blue Raspberry (the “Covered  
16 Products”) Consumers have been ingesting these products for many years, without any  
17 knowledge of their exposure to lead, a very dangerous chemical.  
18

19 16. For many years, Defendants have knowingly and intentionally exposed numerous persons  
20 to lead, without providing a Proposition 65 warning. Prior to ERC’s Notice of Violations,  
21 Defendants failed to provide a warning on the label of the Covered Products, nor was there any  
22 mention on the company’s website that the products contained lead. Defendants have at all times  
23 relevant hereto been aware that the Covered Products contained lead and that persons using these  
24 products have been exposed to this chemical. VMI’s website represents to the public that it has the  
25 testing capacity for heavy metal testing and Proposition 65 compliance and that the final product  
26 will be produced with the highest quality ingredients. MRI is featured on Natrol Inc.’s website that  
27  
28

1 represents that these products are science-based. The website further represents that regardless of  
2 the country of origin, the company's extensive quality procedures ensure that the products are safe,  
3 pure and meet label claims. The company represents that Proposition 65 testing is conducted to  
4 ensure that products are below the legal limit for California's Proposition 65 and that lead,  
5 cadmium, arsenic and mercury are tested. Defendants have been aware of the lead in the Covered  
6 Products and have failed to disclose the presence of this chemical to the public, who continue to  
7 believe that the products are safe, healthy and pure.

8  
9  
10 17. Prior to ERC's Notice of Violations, Defendants failed to provide consumers of the Covered  
11 Products with a clear and reasonable warning that they have been exposed to a chemical known to  
12 the State of California to cause cancer, birth defects and other reproductive harm.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**  
15 **and Reasonable Warning under Proposition 65)**

16 18. ERC refers to paragraphs 1-17, inclusive, and incorporates them herein by this reference.

17  
18 19. By committing the acts alleged above, Defendants have, in the course of doing business,  
19 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to  
20 the State of California to cause cancer, birth defects and other reproductive harm without first giving  
21 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code  
22 Section 25249.6.

23  
24 20. Said violations render Defendants liable for civil penalties up to \$2,500 (two thousand,  
25 five hundred dollars) per day, for each violation.

1 **SECOND CAUSE OF ACTION**

2 **(Declaratory Relief)**

3 21. ERC refers to paragraphs 1-20, inclusive, and incorporates them herein by this reference.

4  
5 22. There exists an actual controversy relating to the legal rights and duties of the parties,  
6 within the meaning of Code of Civil Procedure Section 1060, between ERC and Defendants  
7 concerning:

8 a) whether Defendants have exposed individuals to a chemical known to the State of  
9 California to cause cancer, birth defects and other reproductive harm without providing clear and  
10 reasonable warning.  
11

12 **VI**

13 **PRAYER**

14 WHEREFORE ERC prays for relief as follows:

15 1. On the First Cause of Action, for civil penalties for each and every violation according to  
16 proof;  
17

18 2. On the First Cause of Action, and pursuant to Health & Safety Code Section 25249.7 (a), for  
19 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,  
20 prohibiting Defendants from exposing persons to lead without providing clear and reasonable  
21 warning;  
22

23 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
24 Procedure Section 1060 declaring:

25 a. that Defendants have exposed individuals to a chemical known to the State of California  
26 to cause, birth defects and other reproductive harm without providing clear and reasonable warning;  
27

28 and

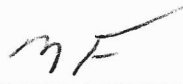
1 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Section 1021.5 of the Code  
2 of Civil Procedure or the substantial benefit theory;

3 5. For costs of suit herein; and

4 6. For such other relief as the Court may deem just and proper.  
5

6 Dated: April 19, 2012

7 By

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9 \_\_\_\_\_  
10 Michael Freund  
11 Attorney for Environmental Research Center  
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MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-1101

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

July 9, 2010

Re: Notice of Violation Against Medical Research Institute for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead contained in the named products manufactured and distributed by Medical Research Institute.

This letter constitutes notification that Medical Research Institute located at 21411 Prairie Street, Chatsworth, CA 91311 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Medical Research Institute is exposing people to lead from the following products: MRI NO2-Charger – Chocolate Blast and MRI NO2 Ripcuts Cellular Fat Burn-Grape.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Medical Research Institute is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1)(A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that

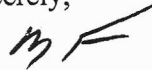


are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Medical Research Institute unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts 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.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'MF', written over a horizontal line.

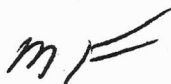
Michael Freund

cc: Chris Heptinstall, ERC  
Karen Evans, ERC

exposures exist from exposure to the products from the noticed party. Furthermore, as a result of the above, I have concluded that 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 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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: July 8, 2010



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Michael Freund  
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On July 9, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2009 at Berkeley, California.

*MF*

---

Michael Freund

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

District Attorney of Glenn County  
PO Box 430  
Willows, CA 95988

District Attorney of Marin County  
3501 Civic Center Dr., Room 130  
San Rafael, CA 94903

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

District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93239

District Attorney of Mono County  
PO Box 617  
Bridgeport, CA 93517

District Attorney of Contra Costa  
County  
527 Ferry Street  
Martinez, CA 94553

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

District Attorney of Mariposa County  
PO Box 730  
Mariposa, CA 95338

District Attorney of Alpine County  
PO Box 248  
Markleeville, CA 96120

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

District Attorney of Monterey County  
230 Church Street, Bdg. 2  
Salinas, CA 93901

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

District Attorney of Imperial County  
939 Main Street  
El Centro, CA 92243

District Attorney of Mendocino County  
PO Box 1000  
Ukiah, CA 95482

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

District Attorney of Lassen County  
220 S. Lassen St., Ste 8  
Susanville, CA 96130

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

District Attorney of Butte County  
25 County Center Drive  
Droville, CA 95965

District Attorney of Inyo County  
PO Drawer D  
Independence, CA 93526

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

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

District Attorney of Los Angeles County  
210 W. Temple Street, Room 345  
Los Angeles, CA 90012

District Attorney of Nevada County  
110 Union Street  
Nevada City, CA 95959-2503

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

District Attorney of Madera County  
209 West Yosemite Ave.  
Madera, CA 93637

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

District Attorney of Fresno County  
220 Tulare Street, # 1000  
Fresno, CA 93721

District Attorney of Kern County  
1215 Truxtun Ave.  
Bakersfield, CA 93301

District Attorney of Modoc County  
204 S. Court Street  
Alturas, CA 96101-4020

District Attorney of Placer County  
2501 North Lake Blvd.  
Tahoe City, CA 96145

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

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

District Attorney of San Bernardino Cty  
316 N. Mountain View Ave.  
San Bernardino, CA 92415

District Attorney of Sierra County  
Courthouse, PO Box 457  
Donieville, CA 95936

District Attorney of Ventura County  
800 South Victoria Ave.  
Ventura, CA 93009

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

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

District Attorney of Tehama County  
PO Box 519  
Red Bluff, CA 96080

District Attorney of San Diego County  
330 West Broadway, Suite 1320  
San Diego, 92101

District Attorney of Siskiyou County  
PO Box 986  
Yreka, CA 96097

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501

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

District Attorney of Trinity County  
PO Box 310  
11 Court Street  
Weaverville, CA 96093

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

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

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

District Attorney of Sacramento County  
301 "G" Street  
Sacramento, CA 95814

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

District Attorney of Tulare County  
221 S. Mooney Ave., Room 224  
Visalia, CA 93291

District Attorney of San Joaquin County  
PO Box 990  
Stockton, CA 95201

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

District Attorney of Tuolumne County  
423 No. Washington Street  
Sonora, CA 95370

District attorney of San Luis Obispo  
County  
050 Monterey St., Room 450  
San Luis Obispo, CA 93408

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

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

District Attorney of San Benito County  
19 Fourth Street, 2<sup>nd</sup> Floor  
Lodi, CA 95023

District Attorney of Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
PO Box 442  
Modesto, CA 95353

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

San Diego City Attorney's Office  
1200 3<sup>rd</sup> Ave. # 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

California Attorney General's Office  
Attn: Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
PO Box 70550  
Oakland, CA 94612

Karen A. Evans, General Counsel  
Environmental Research Center  
Law Office of Karen A. Evans.  
4218 Biona Place  
San Diego, CA 92116

Edward Byrd, President  
Medical Research Institute  
21411 Prairie Street  
Chatsworth, CA 91311



## Environmental Research Center

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

November 5, 2010

**VIA CERTIFIED MAIL**

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
For Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

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

**VIA PRIORITY MAIL**

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

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

Dear Addressees:

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

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

The name of the Company covered by this Notice that violated Proposition 65 is:

**VMI Nutrition, Inc.**

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

November 5, 2010

Page 3

cc: Karen Evans

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to VMI Nutrition, Inc. and its Registered Agent for Service of Process only)

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



**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by VMI Nutrition, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: November 5, 2010



---

Michael Freund  
Attorney for Environmental Research Center

**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 November 5, 2010, 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 in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
For Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

On November 5, 2010, 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 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 November 5, 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 November 5, 2010, in Fort Oglethorpe, Georgia.



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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  
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District Attorney, Lake County  
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District Attorney, Lassen County  
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Susanville, CA 96130

District Attorney, Los Angeles County  
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District Attorney, Madera County  
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District Attorney, Mendocino County  
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District Attorney, Merced County  
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Merced, CA 95340

District Attorney, Modoc County  
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Alturas, CA 96101-4020

District Attorney, Mono County  
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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  
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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.*

November 5, 2010

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Riverside, CA 92501

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Sacramento, CA 9581

District Attorney, San Benito County  
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Hollister, CA 95023

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

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Sonora, CA 95370

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

District Attorney, Yolo County  
301 2<sup>nd</sup> 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



## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

January 14, 2011

### VIA CERTIFIED MAIL

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
for Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

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

### VIA PRIORITY MAIL

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

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

Dear Addressees:

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

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

The name of the Company covered by this Notice that violated Proposition 65 is:

**VMI Nutrition, Inc.**

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

**MRI Black Powder Blue Raspberry 15g - Lead**

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

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

VMI Nutrition, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. 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's label. VMI Nutrition, Inc. violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless VMI Nutrition, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



---

Chris Heptinstall, Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to VMI Nutrition, Inc. and its Registered Agent for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by VMI Nutrition, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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 14, 2011



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Michael Freund  
Attorney for Environmental Research Center

**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 January 14, 2011, 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 in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
for Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

On January 14, 2011, 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 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 January 14, 2011, 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 January 14, 2011, 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  
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Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
January 14, 2011  
Page 6

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District Attorney, San Benito County  
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San Bernardino, CA 92415-0004

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District Attorney, San Joaquin County  
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Stockton, CA 95201

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San Luis Obispo, CA 93408

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Santa Barbara, CA 93101

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District Attorney, Santa Cruz County  
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District Attorney, Siskiyou County  
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Woodland, CA 95695

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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