

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
 NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE  
 Case Number \_\_\_\_\_

BC454453

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3©). There is additional information on the reverse side of this form

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Carolyn B. Kuhl	1	534	Hon. Holly E. Kendig	42	416
Hon. J. Stephen Czuleger	3	224	Hon. Mel Red Recana	45	529
Hon. Luis A. Lavin	13	630	Hon. Debre Katz Weintraub	47	507
Hon. Terry A. Green	14	300	Hon. Elizabeth Allen White	48	506
X Hon. Richard Fruin	15	307	Hon. Deirdre Hill	49	509
Hon. Rita Miller	16	306	Hon. John Shepard Wiley Jr.	50	508
Hon. Richard E. Rico	17	309	Hon. Abraham Khan	51	511
Hon. Rex Heeseman	19	311	Hon. Susan Bryant-Deason	52	510
Hon. Kevin C. Brazile	20	310	Hon. John P. Shook	53	513
Hon. Zaven V. Sinanian	23	315	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. Michael Johnson	56	514
Hon. James R. Dunn	26	316	Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palazuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. John A. Kronstadt	30	400	Hon. David L. Minning	61	632
Hon. Alan S. Rosenfield	31	407	Hon. Michael L. Stern	62	600
Hon. Mary H. Strobel	32	406	Hon. Kenneth R. Freeman	64	601
Hon. Charles F. Palmer	33	409	Hon. Mark Mooney	68	617
Hon. Amy D. Hogue	34	408	Hon. Ramona See	69	621
Hon. Daniel Buckley	35	411	Hon. Soussan G. Bruguera	71	729
Hon. Gregory Alarcon	36	410	Hon. Ruth Ann Kwan	72	731
Hon. Joanne O'Donnell	37	413	Hon. Teresa Sanchez-Gordon	74	735
Hon. Maureen Duffy-Lewis	38	412	Hon. William F. Fahey	78	730
Hon. Michael C. Solner	39	415	Hon. Emilie H. Elias*	324	CCW
Hon. Michelle R. Rosenblatt	40	414	other		
Hon. Ronald M. Sohigian	41	417			

**\*Class Actions**

All class actions are initially assigned to Judge Emilie H. Elias in Department 324 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the Outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ JOHN A. CLARKE, Executive Officer/Clerk  
 By \_\_\_\_\_, Deputy Clerk

LACIV CCH 190 (Rev. 04/10)  
 LASC Approved 05-06

**NOTICE OF CASE ASSIGNMENT -  
 UNLIMITED CIVIL CASE**

Page 1 of 2

1 GIDEON KRACOV (SBN 179815)  
801 S. Grand Avenue, Ste. 1100  
2 Los Angeles, CA 90017  
213.629.2071  
3 FAX 213.623.7755  
gk@gideonlaw.net

4 Attorneys for Plaintiff  
5 Environmental Research Center

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 04 2011

John A. Clarke, Executive Officer/Clerk  
By M. G. Fleur-Clayton, Deputy

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10  
11 ENVIRONMENTAL RESEARCH CENTER, )  
a non-profit California corporation; )  
12 Plaintiff, )  
13 v. )  
14 MUSCLE PHARM, LLC, MUSCLEPHARM )  
CORPORATION, DOES 1 through 10; )  
15 Defendant(s). )  
16

Case No. \_\_\_\_\_

BC454453

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

Health & Safety Code §25249.5, *et seq.*

17  
18 Plaintiff Environmental Research Center brings this action in the interests of the  
19 general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendant(s)' continuing failure to warn thousands  
22 of consumers in California that they are being exposed to lead, a substance known to the State  
23 of California to cause cancer, birth defects and other reproductive harm. Defendant(s)  
24 manufactures, packages, distributes, markets, and/or sells in California certain herbal products  
25 including Shred Matrix, MusclePharm Battle Fuel, MusclePharm Recon and MusclePharm  
26 Battle Fuel Performance Pack containing lead (the "PRODUCTS").

1           2.       Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are  
2 substances known to the State<sup>1</sup> of California to cause cancer, birth defects and other  
3 reproductive harm.

4           3.       The use and/or handling of the PRODUCTS causes exposures to the LISTED  
5 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe  
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")  
7 §25249.5, *et seq.* (also known as "Proposition 65"). Defendant(s) has failed to provide the  
8 health hazard warnings required by Proposition 65.

9           4.       Defendant(s)' continued manufacturing, packaging, distributing, marketing  
10 and/or sales of the PRODUCTS without the required health hazard warnings, causes  
11 individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS  
12 that violate Proposition 65.

13           5.       Plaintiff seeks injunctive relief enjoining Defendant(s) from the continued  
14 manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in  
15 California without provision of clear and reasonable warnings regarding the risks of cancer,  
16 birth defects and other reproductive harm posed by exposure to the LISTED CHEMICALS  
17 through the use and/or handling of the PRODUCTS. Plaintiff seeks an injunctive order  
18 compelling Defendant(s) to bring its business practices into compliance with Proposition 65 by  
19 providing a clear and reasonable warning to each individual who has been and who in the  
20 future may be exposed to LISTED CHEMICALS from the use of the PRODUCTS. Plaintiff  
21 also seeks an order compelling Defendant(s) to identify and locate each individual person who  
22 in the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and  
23 reasonable warning that the use of the PRODUCTS will cause exposures to the LISTED  
24 CHEMICALS.

25  
26  

---

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

1           6.       In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to  
 2 remedy Defendant(s)' failure to provide clear and reasonable warnings regarding exposures to  
 3 the LISTED CHEMICALS.

4                                       **JURISDICTION AND VENUE**

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

9           8.       This Court has jurisdiction over Defendant(s) because, based on information  
 10 and belief, Defendant(s) is a business having sufficient minimum contacts with California, or  
 11 otherwise intentionally availing itself of the California market through the distribution and sale  
 12 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the  
 13 California courts consistent with traditional notions of fair play and substantial justice.

14           9.       Venue in this action is proper in the Los Angeles Superior Court because the  
 15 Defendant has violated California law in the County of Los Angeles.

16                                       **PARTIES**

17           10.     PLAINTIFF Environmental Research Center ("PLAINTIFF") is a corporation  
 18 organized under California's Corporation Law. ERC is dedicated to, among other causes,  
 19 reducing the use and misuse of hazardous and toxic substances, consumer protection, worker  
 20 safety and corporate responsibility.

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

23           12.     Defendant MUSCLE PHARM, LLC, is a limited liability company organized  
 24 under the laws of the State of Nevada and a person doing business within the meaning of H&S  
 25 Code §25249.11. Defendant MUSCLE PHARM CORPORATION, is a corporation organized  
 26 under the laws of the State of Nevada and a person doing business within the meaning of H&S  
 Code §25249.11.

1           13.     Upon information and belief, and upon that basis, PLAINTIFF alleges that the  
2 true names, or capacities of DOES 1 through 10, inclusive (the "DOES"), whether individual,  
3 corporate, associate or otherwise, are presently unknown to PLAINTIFF, who therefore sue  
4 said Defendants by such fictitious names. PLAINTIFF will amend this Complaint to show  
5 their true names and capacities when the same have been ascertained.

6           14.     DEFENDANT(S) manufactures, packages, distributes, markets and/or sells the  
7 PRODUCTS for sale or use in California and in Los Angeles County.

8   **STATUTORY BACKGROUND**

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

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

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

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

25   **FACTUAL BACKGROUND**

26           18.     On February 27, 1987, the State of California officially listed the chemical lead  
as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
requirement one year later and was therefore subject to the "clear and reasonable" warning

1 requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
2 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

3 19. On October 1, 1992, the State of California officially listed the chemicals lead  
4 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
5 subject to the warning requirement one year later and were therefore subject to the "clear and  
6 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR §  
7 25000, *et seq.*; H&S Code §25249.6, *et seq.*)

8 20. PLAINTIFF is informed and believes, and based on such information and belief  
9 alleges the PRODUCTS have been distributed and/or sold to individuals in California without  
10 clear and reasonable warning since at least October 8, 2007. The PRODUCTS continue to be  
11 distributed and sold in California without the requisite warning information.

12 21. As a proximate result of acts by DEFENDANT(S), as a person in the course of  
13 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout  
14 the State of California, including in the County of Los Angeles, have been exposed to the  
15 LISTED CHEMICALS without clear and reasonable warning. The individuals subject to the  
16 violative exposures include normal and foreseeable users of the PRODUCTS, as well as all  
17 other persons exposed to the PRODUCTS.

18 22. At all times relevant to this action, DEFENDANT(S) has knowingly and  
19 intentionally exposed the users and/or handlers of the PRODUCTS to LISTED CHEMICALS  
20 without first giving a clear and reasonable warning to such individuals.

21 23. Individuals using or handling the PRODUCTS are exposed to the LISTED  
22 CHEMICALS in excess of the “maximum allowable daily” and “no significant risk ” levels  
23 determined by the State of California, as applicable, within the meaning of H&S Code  
24 §25249.10(c).

25 24. At all times relevant to this action, DEFENDANT(S) has, in the course of doing  
26 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and  
reasonable warning that the PRODUCTS expose individuals to the LISTED CHEMICALS.

1           25.     The PRODUCTS continue to be distributed and sold in California without the  
2 requisite clear and reasonable warning.

3  
4   **FIRST CAUSE OF ACTION**

5           **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning**  
6           **the PRODUCTS described in PLAINTIFF's October 8, 2010 60-Day Notice of Violation)**  
7           **Against All DEFENDANT(S) and DOES**

8           26.     PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 25,  
9 inclusive, as if specifically set forth herein.

10           27.     On October 8, 2010, PLAINTIFF sent a 60-Day Notice of Proposition 65  
11 violations to the requisite public enforcement agencies, and to all defendants ("Notice")  
12 attached hereto as Exhibit A. The Notice was issued pursuant to, and in compliance with, the  
13 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding  
14 the notice of the violations to be given to certain public enforcement agencies and to the  
15 violator. The notice given included, *inter alia*, the following information: the name, address,  
16 and telephone number of the noticing individual; the name of the alleged violator; the statute  
17 violated; the approximate time period during which violations occurred; and descriptions of the  
18 violations, including the chemicals involved, the routes of toxic exposure, and the specific  
19 product or type of product causing the violations, and was issued as follows:

- 20           a.     DEFENDANT(S) and the California Attorney General were provided  
21               copies of the Notice by Certified Mail.
- 22           b.     DEFENDANT(S) was provided a copy of a document entitled "The Safe  
23               Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
24               Summary," which is also known as Appendix A to Title 27 of CCR  
25               §25903.
- 26           c.     The California Attorney General was provided with a Certificate of Merit  
             by the attorney for the noticing party, stating that there is a reasonable  
             and meritorious case for this action, and attaching factual information

1 sufficient to establish a basis for the certificate, including the identify of  
2 the persons consulted with and relied on by the certifier, and the facts  
3 studies, or other data reviewed by those persons, pursuant to H&S Code  
4 §25249.7(h) (2).

5 28. The appropriate public enforcement agencies have failed to commence and  
6 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
7 DEFENDANT(S) based on the allegations herein.

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

14 30. By the above-described acts, DEFENDANT(S) has violated H&S Code §  
15 25249.6 and is therefore subject to an injunction ordering DEFENDANT(S) to stop violating  
16 Proposition 65, to provide warnings to all present and future customers and to provide  
17 warnings to DEFENDANT(S)' past customers who purchased or used the PRODUCTS  
18 without receiving a clear and reasonable warning.

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

21 32. Continuing commission by DEFENDANT(S), of the acts alleged above will  
22 irreparably harm the citizens of the State of California, for which harm they have no plain,  
23 speedy, or adequate remedy at law.

24 Wherefore, PLAINTIFF prays judgment against DEFENDANT(S), as set forth  
25 hereafter.  
26



1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**  
3 **PRODUCTS described in PLAINTIFF's October 8, 2010 60-Day Notice of Violation)**  
4 **Against all DEFENDANT(S) and DOES**

5 33. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 32,  
6 inclusive, as if specifically set forth herein.

7 34. On October 8, 2010, PLAINTIFF sent a 60-Day Notice of Proposition 65  
8 violations to the requisite public enforcement agencies, and to DEFENDANT(S) attached hereto  
9 as Exhibit A ("Notice"). The Notice was issued pursuant to, and in compliance with, the  
10 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding  
11 the notice of the violations to be given to certain public enforcement agencies and to the  
12 violator. The notice given included, *inter alia*, the following information: the name, address,  
13 and telephone number of the noticing individual; the name of the alleged violator; the statute  
14 violated; the approximate time period during which violations occurred; and descriptions of the  
15 violations, including the chemicals involved, the routes of toxic exposure, and the specific  
16 product or type of product causing the violations, and was issued as follows:

- 17 a. DEFENDANT(S) and the California Attorney General were provided  
18 copies of the Notice by Certified Mail.
- 19 b. DEFENDANT(S) was provided a copy of a document entitled "The Safe  
20 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
21 Summary," which is also known as Appendix A to Title 27 of CCR  
22 §25903.
- 23 c. The California Attorney General was provided with a Certificate of Merit  
24 by the attorney for the noticing party, stating that there is a reasonable  
25 and meritorious case for this action, and attaching factual information  
26 sufficient to establish a basis for the certificate, including the identify of  
the persons consulted with and relied on by the certifier, and the facts  
studies, or other data reviewed by those persons, pursuant to H&S Code

1 §25249.7(h) (2).

2 35. The appropriate public enforcement agencies have failed to commence and  
3 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
4 DEFENDANT(S) based on the allegations herein.

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

11 37. By the above-described acts, DEFENDANT(S) is liable, pursuant to H&S Code  
12 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to a  
13 LISTED CHEMICAL from the PRODUCTS.

14 Wherefore, PLAINTIFF prays judgment against DEFENDANT(S), as set forth  
15 hereafter.

16 **THE NEED FOR INJUNCTIVE RELIEF**

17 38. PLAINTIFF realleges and incorporates by this reference Paragraphs 1 through  
18 37, as if set forth below.

19 39. By committing the acts alleged in this Complaint, DEFENDANT(S) has caused  
20 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence  
21 of equitable relief, DEFENDANT(S) will continue to create a substantial risk of irreparable  
22 injury by continuing to cause consumers to be involuntarily and unwittingly exposed to the  
23 LISTED CHEMICALS through the use and/or handling of the PRODUCTS.

24 **PRAYER FOR RELIEF**

25 Wherefore, PLAINTIFF accordingly prays for the following relief:

26 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),  
enjoining DEFENDANT(S), its agents, employees, assigns and all persons acting in concert or

1 participating with DEFENDANT(S), from distributing or selling the PRODUCTS in California  
2 without first providing a clear and reasonable warning, within the meaning of Proposition 65,  
3 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICALS.

4 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling  
5 DEFENDANT(S) to identify and locate each individual who has purchased the PRODUCTS  
6 since October 8, 2007, and to provide a warning to such person that the use of the PRODUCTS  
7 will expose the user to chemicals known to cause cancer, birth defects, and other reproductive  
8 harm.

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

11 D. an award to PLAINTIFF of its reasonable attorneys fees and costs of suit  
12 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further  
13 application to the Court; and,

14 E. such other and further relief as may be just and proper.

15  
16 DATED: 2/9, 2011

LAW OFFICE OF GIDEON KRACOV

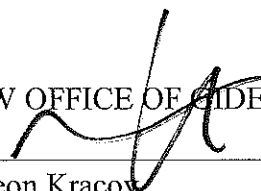
  
\_\_\_\_\_  
Gideon Kracov  
Attorneys for Plaintiff  
Environmental Research Center

EXHIBIT A



## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

October 8, 2010

### VIA CERTIFIED MAIL

Current CEO or President  
Muscle Pharm, LLC  
10145 W Wesley Dr  
Lakewood, CO 80227

Current CEO or President  
MusclePharm Corporation  
3390 Peoria Street #307  
Aurora, CO 80010

Brad Pyatt  
(MusclePharm Corporation's Registered  
Agent of Service of Process)  
3390 Peoria Street #307  
Aurora, CO 80010

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

Re: Notice of Violation against Muscle Pharm, LLC, and MusclePharm Corporation for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a 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. Tel. (619) 309-4194, Executive Director: Chris Heptinstall. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Muscle Pharm, LLC and MusclePharm Corporation.

This letter constitutes notification that Muscle Pharm, LLC located at 10145 W. Wesley Drive, Lakewood, CO 80227 and MusclePharm Corporation located at 3390 Peoria Street #307, Aurora, CO 80010 have 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, these Companies has manufactured and distributed products that 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, at least since October 8, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, the primary route of exposure for consumers has been oral through ingestion, but may also occur through the inhalation and/or dermal contact route of exposure.

Muscle Pharm, LLC, and MusclePharm Corporation are exposing people to lead from the following products:

**MusclePharm Shred Matrix**  
**MusclePharm Battle Fuel**  
**MusclePharm Recon**  
**MusclePharm Battle Fuel Performance Pack**

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Muscle Pharm, LLC and MusclePharm Corporation are 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 Muscle Pharm, LLC and MusclePharm Corporation unless they agree in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, 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.

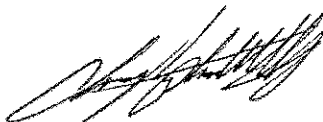
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 8, 2010

Page 3

Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, [gk@gideonlaw.net](mailto:gk@gideonlaw.net).

Sincerely,



Chris Heptinstall  
Executive Director, Environmental Research Center

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Muscle Pharm, LLC, MusclePharm Corporation 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 Muscle Pharm, LLC and MusclePharm Corporation**

I, Gideon Kracov, 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: October 8, 2010

---

Gideon Kracov, Attorney At Law



**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 October 8, 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 CEO or President  
Muscle Pharm, LLC  
10145 W Wesley Dr  
Lakewood, CO 80227

Current CEO or President  
MusclePharm Corporation  
3390 Peoria Street #307  
Aurora, CO 80010

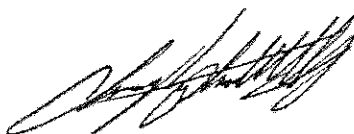
Brad Pyatt  
(MusclePharm Corporation’s Registered  
Agent of Service of Process)  
3390 Peoria Street #307  
Aurora, CO 80010

On October 8, 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 October 8, 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 October 8, 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  
Hanford, CA 93230

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

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

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

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

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

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

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

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

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

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

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

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

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

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

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

District Attorney, Tuolumne County  
423 N. Washington Street  
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