

**ENDORSED
FILED
ALAMEDA COUNTY**

**JAN 10 2010
CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy**

1 Michael Freund SBN 99687
2 Law Office of Michael Freund
3 1915 Addison Street
4 Berkeley, CA 94704
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6 Facsimile: (510) 540-5543

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Attorney for Plaintiff Environmental Research Center

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

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

Case No. **RG11555006**

Plaintiff,

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

v.

**OPTIMUM NUTRITION, INC. and
DOES 1-100**

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

Defendants.

Plaintiff Environmental Research Center hereby alleges:

I

INTRODUCTION

1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this action as a private attorney general and in the public interest pursuant to Health & Safety Code Section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties to

1 remedy Optimum Nutrition Inc.'s ("Optimum Nutrition") failure to warn users of certain nutritional
2 health supplements sold by the company that they are being exposed to lead, a chemical known to
3 the State of California to cause cancer, birth defects and other reproductive harm. Based on the Safe
4 Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code Section 25249.5 et seq)
5 also known as "Proposition 65," businesses with ten or more employees must provide a "clear and
6 reasonable warning" prior to exposing persons to these chemicals.
7

8 II

9 PARTIES

10
11 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes, helping
12 safeguard the public from health hazards by bringing about a reduction in the use and misuse of
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and
14 encouraging corporate responsibility.
15

16 3. Defendant Optimum Nutrition is a business entity that manufactures, distributes and/or sells
17 nutritional products that expose users of these products to lead in the State of California. These
18 products are ABB Speed Stack Pumped N.O. Grape Blast, ABB Speed Stack Grape, Optimum
19 Nutrition – Glucosamine + CSA Super Strength, Optimum Nutrition – Opti – Men and Optimum
20 Nutrition – Thermo Cuts. ("Covered Products"). Optimum Nutrition is a company that employs
21 ten or more persons.
22

23 4. Defendants Does I-100, are named herein under fictitious names, as their true names and
24 capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each
25 of said Does is responsible, in some actionable manner, for the events and happenings hereinafter
26 referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or
27 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
28

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. ERC has performed any and all conditions precedent to the filing of a legal action pursuant to
9 Proposition 65 by serving by mail a Notice of Violation, dated September 4, 2010 and October 8,
10 2010 to the Attorney General of the State of California, the state's District Attorneys, the
11 appropriate City Attorney's and to Optimum Nutrition. A true and correct copy of the Notice of
12 Violation is attached herein as Exhibit A. More than 60 days have passed since this Notice of
13 Violation was mailed and no public enforcement entity has filed a complaint in this case.
14 Optimum Nutrition has made no attempt to contact ERC to resolve this matter.

15
16
17 7. This Court is the proper venue for the action because the causes of action have arisen in the
18 County of Alameda where some of the violations of law have occurred. Furthermore, this Court is
19 the proper venue under Code of Civil Procedure Section 395.5 and Health & Safety Code Section
20 25249.7.

21
22 **IV**

23 **STATUTORY BACKGROUND**

24 **A. Proposition 65**

25 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as
26 "Proposition 65" by an overwhelming majority vote of the people in November of 1986.
27
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 10. Implementing regulations for Proposition 65 provide that warnings are required for consumer
8 product exposures. A "consumer product exposure is an exposure which results from a person's
9 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer
10 good, or any exposure that results from receiving a consumer service." 27 CCR Section 25601 (b).

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

18
19 12. Proposition 65 establishes a procedure by which the State is to develop a list of
20 chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code
21 Section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after
22 the chemical was published on the State list. Id., Section 25249.10(b). Lead was listed as a
23 chemical known to the State of California to cause developmental toxicity and male and female
24 reproductive toxicity on February 27, 1987. Lead was listed as a chemical known to the State of
25 California to cause cancer on October 1, 1992. Title 27, Cal. Code Regs., Section 27001.
26
27

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. Defendant Optimum Nutrition manufactures, distributes and/or sells the Covered Products
14 to the State of California. These products contain lead.
15

16 16. Optimum Nutrition has knowingly and intentionally exposed numerous persons to lead,
17 without providing a Proposition 65 warning. The company has at all times relevant hereto been
18 aware that the Covered Products contain lead and that persons using these products are exposed to
19 the chemical, primarily through ingestion. Optimum Nutrition markets the Covered Products with
20 knowledge that consumers are being exposed to lead during normal use of the product.
21

22 17. Optimum Nutrition has failed to provide consumers of the Covered Products with a clear
23 and reasonable warning that they are being exposed to a chemical known to the State of California
24 to cause cancer, birth defects and other reproductive harm.
25

26 **FIRST CAUSE OF ACTION**

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

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

1 19. By committing the acts alleged above, Optimum Nutrition has, in the course of doing
2 business, knowingly and intentionally exposed users of the Covered Products to lead, a chemical
3 known to the State of California to cause cancer, birth defects and other reproductive harm without
4 first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety
5 Code Section 25249.6.
6

7 20. Said violations render each Defendant liable for civil penalties up to \$2,500 (two
8 thousand, five hundred dollars) per day, for each violation.
9

10 21. Optimum Nutrition's continued violation of the law will irreparably harm ERC and the
11 public interest in whose behalf Plaintiff brings this action, for which there is no adequate remedy
12 at law.

13 **SECOND CAUSE OF ACTION**

14 **(Declaratory Relief)**

15 22. ERC refers to paragraphs 1-21, inclusive, and incorporates them herein by this reference.
16

17 23. There exists an actual controversy relating to the legal rights and duties of the parties, within
18 the meaning of Code of Civil Procedure Section 1060, between Plaintiff and Defendant concerning:

19 a) whether Optimum Nutrition has exposed individuals to a chemical known to the State of
20 California to cause cancer, birth defects and other reproductive harm without providing clear and
21 reasonable warning.
22

23 **VI**

24 **PRAYER**

25 WHEREFORE Plaintiff prays for relief as follows:

26 1. On the First Cause of Action, for civil penalties for each and every violation according to
27 proof;
28

1 2. On the First Cause of Action, and pursuant to Health & Safety Code Section 25249.7 (a), for
2 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,
3 prohibiting Optimum Nutrition from exposing persons to lead without providing clear and
4 reasonable warning;
5

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

8 a. that Optimum Nutrition has exposed individuals to a chemical known to the State of
9 California to cause, birth defects and other reproductive harm without providing clear and
10 reasonable warning; and
11

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

14 5. For costs of suit herein; and

15 6. For such other relief as the Court may deem just and proper.
16

17 Dated: January 6, 2011

18 By

19 

20 _____
21 Michael Freund
22 Attorney for Environmental Research Center
23
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LAW OFFICES OF
ANDREW L. PACKARD

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

September 4, 2010

VIA CERTIFIED MAIL
Current President or CEO
Optimum Nutrition
1756 Industrial Rd
Walterboro, SC – 29488

Current President or CEO
American Body Building Products, LLC.
700 N Commerce St
Aurora, IL - 60504

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

Dear Sirs,

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

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

The names of the violator(s) covered by this notice are: Optimum Nutrition, and American Body Building Products, LLC (hereafter, the "Violator(s)"). The Violator(s) manufacture, market, distribute and/or sell in California the following products causing exposures to lead and lead compounds:

ABB Speed Stack Pumped N.O. Grape Blast
ABB Speed Stack Grape

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

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

EXHIBIT A

September 4, 2010

Page 2

Duration of violations. Each of these ongoing violations has occurred on every day since at least September 4, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

Very Truly Yours,



Andrew L. Packard

Attachments:

Certificate of Merit

Certificate of Service

List of Service

CERTIFICATE OF MERIT

Re: the Environmental Research Center's Notice of Proposition 65 Violations Issued to Optimum Nutrition, and American Body Building Products, LLC.

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 4, 2010



Andrew L. Packard

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

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

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

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

Current President or CEO
Optimum Nutrition
1756 Industrial Rd
Walterboro, SC – 29488

Current President or CEO
American Body Building Products, LLC.
700 N Commerce St
Aurora, IL - 60504

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

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

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

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



Chris Heptinstall

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Kern County
1215 Truxton 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.*

September 4, 2010

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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, 2nd Floor
Hollister, CA 95023

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

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

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

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

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

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

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

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

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

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

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

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

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 12th 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 2nd Street
Woodland, CA 95695

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

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

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

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

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



Environmental Research Center

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

October 8, 2010

VIA CERTIFIED MAIL

Current President or CEO
Optimum Nutrition, Inc.
1756 Industrial Rd
Walterboro, SC 29488

VIA PRIORITY MAIL

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

Registered Agent for Service: Corporation
Service Co.
(Optimum Nutrition)
1703 Laurel Street
Columbia, SC 29201

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

Optimum Nutrition, Inc.

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

- Optimum Nutrition - Glucosamine + CSA Super Strength - Lead
- Optimum Nutrition - Opti - Men - Lead
- Optimum Nutrition - Thermo Cuts - Lead

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

October 8, 2010

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 as chemical known to cause cancer.

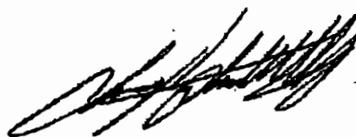
This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to each of the Violators.

Each of the Violators 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. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemicals.

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 each of the Violators 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, Andrew L. Packard, 100 Petaluma Blvd. N., Ste 301, Petaluma, CA 94952, telephone no.: 707-763-7227, e-mail: info@packardlawoffices.com

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

cc: Andrew Packard
Karen Evans

Attachments

Certificate of Merit
Certificate of Service
OEHHHA Summary (to Optimum 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 Optimum Nutrition, Inc.

I, Karen Evans, 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.

Karen A. Evans

Dated: October 8, 2010

Karen A. Evans
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 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 President or CEO
Optimum Nutrition, Inc.
1756 Industrial Rd
Walterboro, SC 29488

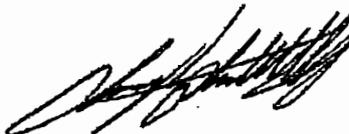
Registered Agent for Service:
Corporation Service Co.
(Optimum Nutrition)
1703 Laurel Street
Columbia, SC 29201

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.



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, 2nd Floor
Hollister, CA 95023

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

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

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

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

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

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

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

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

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

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

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

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

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

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832 12th Street, Ste 300
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221 S. Mooney Avenue, Room 224
Visalia, CA 93291

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423 N. Washington Street
Sonora, CA 95370

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

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

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

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

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

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

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