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Attorneys for PLAINTIFF
Environmental Research Center, Inc.

ORIGINAL FILED

OCT 17 2013

**LOS ANGELES
SUPERIOR COURT**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ENVIRONMENTAL RESEARCH CENTER,)
INC., a non-profit California corporation,)

PLAINTIFF,

v.

PRO-SOURCE PERFORMANCE)
PRODUCTS, INC. dba PROSOURCE; DOES)
1 through 10,)

DEFENDANT(s).)

Case No.

BC524856

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

PLAINTIFF Environmental Research Center, Inc. ("PLAINTIFF") brings this action in the interest of the
general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy DEFENDANT's continuing failure to warn
consumers in California that they are being exposed to lead, a substance known to the State of
California to cause cancer, birth defects and other reproductive harm. DEFENDANT
manufactures, packages, distributes, markets, and / or sells in California certain nutritional

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PRO-SOURCE PERFORMANCE PRODUCTS, INC. dba PROSOURCE;
DOES 1 through 10,

**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ENVIRONMENTAL RESEARCH CENTER, INC., a non-profit California Corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte puede desechar el caso.

The name and address of the court is: LASC-Central District
(El nombre y dirección de la corte es):

111 N. Hill Street
Los Angeles, California 90012

CASE NUMBER:
(Número del Caso):

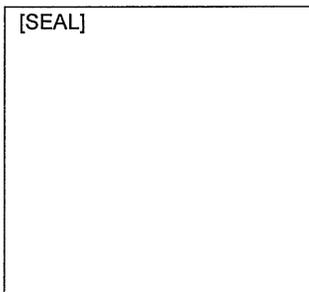
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David A. Rosen [SBN 101287]
ROSE, KLEIN & MARIAS, LLP
801 S. Grand Avenue, 11th Floor
Los Angeles, California 90017-4645

DATE: October , 2013
(Fecha)

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

ROSE, KLEIN & MARIAS LLP
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Attorneys for PLAINTIFF
Environmental Research Center, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ENVIRONMENTAL RESEARCH CENTER,) INC., a non-profit California corporation,) PLAINTIFF,) v.) PRO-SOURCE PERFORMANCE) PRODUCTS, INC. dba PROSOURCE; DOES) 1 through 10,) DEFENDANT(s).)	Case No. COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES Health & Safety Code § 25249.5, <i>et seq.</i>
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PLAINTIFF Environmental Research Center, Inc. ("PLAINTIFF") brings this action in the interest of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy DEFENDANT's continuing failure to warn consumers in California that they are being exposed to lead, a substance known to the State of California to cause cancer, birth defects and other reproductive harm. DEFENDANT manufactures, packages, distributes, markets, and / or sells in California certain nutritional

1 supplement products containing lead (the “PRODUCTS”) including:

- 2 • ProSource Super Detox Ultra Concentrated
- 3 • ProSource Maximum Strength Ultra GTX
- 4 • Sequel Naturals LTD. Vega Complete Whole Food Health Optimizer Natural
5 Flavor All-in-one, natural plant-based formula
- 6 • Sequel Naturals LTD. Vega Complete Whole Food Health Optimizer All-in-one,
7 natural plant-based formula Chocolate Flavor
- 8 • Sequel Naturals LTD. Vega Sport Natural Plant-Based Performance Optimizer
9 Energy Stamina Mental Focus Recovery Dietary Supplement Beverage Lemon
10 Lime
- 11 • Beast Sports Nutrition Super Test
- 12 • Serious Nutrition Solutions Tribulus 750
- 13 • Species Fiberlyze 100% Bioengineered Fiber Replacement Drink Sugar Free
14 Fruit Punch
- 15 • E’co by Elements Group Bón Pulse
- 16 • Fizogen Precision Technologies Inc. Cheat Tabs
- 17 • Nutrition Training Systems, LLC Muscology DPX Cuts Advanced Diuretic
18 Formula
- 19 • M.A.N. Sports,Inc. MAN Primal Male
- 20 • Axis Labs Performance Driven Nutrition Xtract High-Definition Diuretic
- 21 • ProSource TribuTest Pure Tribulus Extract
- 22 • Controlled Labs Blue Gene Natural Anabolic Matrix
- 23 • Fizogen Precision Technologies, Inc. Fizogen Precision Technologies Lean Tabs
- 24 • Beverly International Nutrition, Inc. Quadracarn
- 25 • NRG-X Labs Xtreme Greens
- 26 • Species Species Evolutionary Nutrition Arthrolyze Complete Joint Repair
Technology
- Purus Labs Recycle Hormone Exhilarator
- Millennium Sport Technologies Shred Adaptogen Enhanced Ultra

21 2. Lead and lead compounds (“LISTED CHEMICALS”) are substances known to
22 the State¹ of California to cause cancer, birth defects and other reproductive harm.

23 3. The use and / or handling of the PRODUCTS causes exposures to the LISTED
24 CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe
25 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)

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

1 §25249.5, *et seq.* (“Proposition 65”). DEFENDANT has failed to provide the health hazard
2 warnings required by Proposition 65.

3 4. DEFENDANT’s continued manufacturing, packaging, distributing, marketing
4 and/or sales of the PRODUCTS without the required health hazard warnings, causes individuals
5 to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate
6 Proposition 65.

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

18 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil penalties
19 in excess of \$1 million to remedy DEFENDANT’s failure to provide clear and reasonable
20 warnings regarding exposures to the LISTED CHEMICALS.

21 **JURISDICTION AND VENUE**

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

26 8. This Court has jurisdiction over DEFENDANT because, based on information

1 and belief, DEFENDANT is a business having sufficient minimum contacts with California, or
2 otherwise intentionally availing itself of the California market through the distribution and sale
3 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the
4 California courts consistent with traditional notions of fair play and substantial justice.

5 9. Venue in this action is proper in the Los Angeles Superior Court because the
6 DEFENDANT has violated California law in the County of Los Angeles.

7 ***PARTIES***

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

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

13 12. PLAINTIFF is informed and believes that DEFENDANT PRO-SOURCE
14 PERFORMANCE PRODUCTS, INC DBA PRO-SOURCE ("DEFENDANT"), is a corporation
15 organized under the laws of the State of New Jersey and a person doing business within the
16 meaning of H&S Code § 25249.11.

17 13. Upon information and belief, and upon that basis, PLAINTIFF alleges that the
18 true names, or capacities of DOES 1 through 10, inclusive ("DOES"), whether individual,
19 corporate, associate or otherwise, are presently unknown to PLAINTIFF, who therefore sue said
20 DEFENDANT by such fictitious names. PLAINTIFF will amend this Complaint to show their
21 true names and capacities when the same have been ascertained. All DEFENDANTS were in
22 some manner responsible for the violations set forth in this Complaint.

23 14. DEFENDANT manufactures, packages, distributes, markets and / or sells the
24 PRODUCTS for sale or use in California and in Los Angeles County.

25 **STATUTORY BACKGROUND**

26 15. The People of the State of California have declared in Proposition 65 their right

1 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
2 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

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

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

11 17. Proposition 65 provides that any person “violating or threatening to violate” the
12 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
13 “threatening to violate” is defined to mean creating “a condition in which there is a substantial
14 likelihood that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
15 penalties of up to \$2,500.00 per day for each violation of the Act. (H&S Code § 25249.7.)

16 **FACTUAL BACKGROUND**

17 18. On February 27, 1987, the State of California officially listed the chemical lead as
18 a chemical known to cause reproductive toxicity. Lead became subject to the warning
19 requirement one year later and was therefore subject to the “clear and reasonable” warning
20 requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
21 Regulations (“CCR”) § 25000, *et seq.*; H&S Code § 25249.5, *et seq.*)

22 19. On October 1, 1992, the State of California officially listed the chemicals lead and
23 lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject
24 to the warning requirement one year later and were therefore subject to the “clear and
25 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR
26 § 25000, *et seq.*; H&S Code § 25249.6, *et seq.*) Due to the high toxicity of lead, the maximum
allowable dose level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity.

20. To test the PRODUCTS for lead, PLAINTIFF hired a well-respected and

1 accredited testing laboratory that designed the testing protocol used and approved by the
2 California Attorney General years ago for testing heavy metals. The testing results undertaken
3 by PLAINTIFF of the PRODUCTS show violation of the Proposition 65 0.5 ug/day “safe
4 harbor” daily dose limit. One PRODUCT tested for daily exposure in excess of 12 times the
5 Proposition 65 “safe harbor” daily dose limit, another product in excess of 18 times the “safe
6 harbor” limit, and another product tested in excess of 32 times the “safe harbor” limit. Very
7 significant is the fact that people are continuing to be exposed to lead through ingestion as
8 opposed to other not as harmful methods of exposure such as dermal exposure. Ingestion of lead
9 produces much higher exposure levels and health risks than dermal exposure to this chemical.

10 21. At all times relevant to this action, DEFENDANT therefore has knowingly and
11 intentionally exposed the users and / or handlers of the PRODUCTS to LISTED CHEMICALS
12 without first giving a clear and reasonable warning to such individuals.

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

19 **FIRST CAUSE OF ACTION**

20 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning the**
21 **PRODUCTS described in PLAINTIFF’s May 17, 2013 60-Day Notice of Violation)**
22 **Against DEFENDANT and DOES**

23 23. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 22,
24 inclusive, as if specifically set forth herein.

25 24. On May 17, 2013, PLAINTIFF sent a 60-Day Notice of Proposition 65 violations
26 to the requisite public enforcement agencies, and to DEFENDANT (“Notice”), attached hereto
as Exhibit A. The Notice was issued pursuant to, and in compliance with, the requirements of
H&S Code § 25249.7(d) and the statute's implementing regulations regarding the notice of the

1 violations to be given to certain public enforcement agencies and to the violator. The Notice
2 given included, *inter alia*, the following information: the name, address, and telephone number
3 of the noticing individual; the name of the alleged violator; the statute violated; the approximate
4 time period during which violations occurred; and descriptions of the violations, including the
5 chemicals involved, the routes of toxic exposure, and the specific product or type of product
6 causing the violations, and was issued as follows:

7 a. DEFENDANT was provided a copy of the Notice by Certified Mail and
8 the California Attorney General was provided a copy of the Notice by
9 uploading a copy to the Attorney General's website. The various other
10 public prosecutors were served by regular mail. PLAINTIFF's Notice is
11 listed on the California Attorney General's website for DEFENDANT and
12 all public prosecutors to review, confirming that in fact the Attorney
13 General did receive the Notice. PLAINTIFF used for the Notice the
14 United States Postal Service online shipping label system called "Click-N-
15 Ship" that automatically corrects prior to mailing any errors in the zip
16 code. None of these Notices were returned to PLAINTIFF. The Notices
17 were served on all intended actors, were substantially sound, and all
18 purposes of providing notice under Proposition 65 were met.

19 b. DEFENDANT 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 and
25 meritorious case for this action, and attaching factual information
26 sufficient to establish a basis for the certificate, including the identity of
the persons consulted with and relied on by the certifier, and the facts

1 studies, or other data reviewed by those persons, pursuant to H&S Code
2 § 25249.7(h)(2).

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

6 26. The Notice reached DEFENDANT and it was provided all necessary information.
7 DEFENDANT timely received the Notice and was provided sufficient time to investigate and
8 settle this case well prior to filing of the Complaint. This is clear because through its counsel
9 DEFENDANT did contact PLAINTIFF during the 60-Day Notice period concerning the
10 allegations made in the Notice.

11 27. PLAINTIFF is informed and believes that DEFENDANT has failed and/or
12 refused to remedy these violations and continues to manufacture and distribute the PRODUCTS
13 into California. These are not trivial or de minimis exceedances of Proposition 65. By
14 committing the acts alleged in this Complaint DEFENDANT at all times relevant to this action,
15 and continuing through the present, has violated H&S Code § 25249.6 by, in the course of doing
16 business, knowingly and intentionally exposing individuals who use or handle the PRODUCTS
17 set forth in the Notices to the LISTED CHEMICAL, without first providing a clear and
18 reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

19 28. By the above-described acts, DEFENDANT has violated H&S Code § 25249.6
20 and is therefore subject to an injunction ordering DEFENDANT to stop violating Proposition 65,
21 to provide warnings to all present and future customers and to provide warnings to
22 DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a
23 clear and reasonable warning.

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

26 30. Continuing commission by DEFENDANT, of the acts alleged above will
irreparably harm the citizens of the State of California, for which harm they have no plain,

1 speedy, or adequate remedy at law.

2 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

3 **SECOND CAUSE OF ACTION**
4 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**
5 **PRODUCTS described in PLAINTIFF's NOTICE)**
6 **Against DEFENDANT and DOES**

7 31. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 30,
8 inclusive, as if specifically set forth herein.

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

15 33. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code
16 § 25249.7(b), for a civil penalty of \$2,500.00 per day per violation for each unlawful exposure to
17 a LISTED CHEMICAL from the PRODUCTS, in an amount in excess of \$1 million.

18 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

19 **THE NEED FOR INJUNCTIVE RELIEF**

20 34. PLAINTIFF realleges and incorporates by this reference Paragraphs 1 through 33,
21 as if set forth below.

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

PRAYER FOR RELIEF

Wherefore, PLAINTIFF accordingly prays for the following relief:

VICTOR C. ROSE (1907-1972)
ALFRED M. KLEIN (1913-2000)
EUGENE MARIAS (1919-1982)

*ROBERT B. STEINBERG
*HOWARD N. LEHMAN
*HERBERT I. GALPERSON
MARVIN N. SHAPIRO
*BARRY I. GOLDMAN
*G. RONALD FEENBERG
DENNIS D. WELCH
GREGORY STAMOS
DENNIS J. SHERWIN
*ROBERT I. VINES
*MANUEL L. NUNES
DAVID A. ROSEN
RICHARD G. BARONE
WILLIAM M. GREWE
HARRY H. SAMARGHACHIAN
DAVID S. GALPERSON

* DENOTES PROFESSIONAL CORPORATION
† ADMITTED ONLY IN SWEDEN

LAW OFFICES OF

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TONI RAYKOVICH
ALAN P. RIFFEL
LAUREN BELGER
CHRISTEL A. SCHOENFELDER

WENDY HAYWARD-MARSHALL
BABETTE F. BEMEL
LILIA BALLESTEROS
†RONNY MARTINSSON
JANET U. KROPP
MARCUS S. LOO
LISA F. JOU
ESTHER OZ
BENHUR SHERVAN
KEVIN SMITH
DENNIS BELMUDES
BRIAN J. RAMSEY
ERIN M. BERANEK

May 17, 2013

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Pro-Source Performance Products, Inc. dba ProSource

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

- • ProSource Super Detox Ultra Concentrated – Lead
- • ProSource Maximum Strength Ultra GTX – Lead
- • Sequel Naturals LTD Vega Complete Whole Food Health Optimizer – Lead
Natural Flavor All-in-one, natural plant-based formula – Lead
- • Sequel Naturals LTD Vega Complete Whole Food Health Optimizer All-in-one,
natural plant-based formula Chocolate Flavor – Lead
- • Sequel Naturals LTD. Vega Sport Natural Plant-Based Performance Optimizer
Energy Stamina Mental Focus Recovery Dietary Supplement Beverage Lemon Lime
– Lead
- • Beast Sports Nutrition Super Test - Lead
- • Serious Nutrition Solutions Tribulus 750 – Lead
- ✓ • Species Fiberlyze 100% Bioengineered Fiber Replacement Drink Sugar Free Fruit
Punch – Lead
- ✓ • E'co by Elements Group Bón Pulse – Lead
- ✓ • Fizogen Precision Technologies Inc. Cheat Tabs – Lead
- ✓ • Nutrition Training Systems, LLC Muscleology DPX Cuts Advanced Diuretic
Formula – Lead
- ✓ • M.A.N. Sports, Inc. MAN Primal Male – Lead
- ✓ • Axis Labs Performance Driven Nutrition Xtract High-Definition Diuretic – Lead
- ✓ • ProSource TribuTest Pure Tribulus Extract – Lead
- ✓ • Controlled Labs Blue Gene Natural Anabolic Matrix – Lead
- ✓ • Fizogen Precision Technologies, Inc. Fizogen Precision Technologies Lean Tabs –
Lead
- ✓ • Beverly International Nutrition, Inc. Quadracarn – Lead
- ✓ • NRG-X Labs Xtreme Greens – Lead
- ✓ • Species Evolutionary Nutrition Arthrolyze Complete Joint Repair
Technology – Lead
- ✓ • Purus Labs Recycle Hormone Exhilarator – Lead
- ✓ • Millennium Sport Technologies Shred Adaptogen Enhanced Ultra – 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 and lead compounds as chemicals known to cause cancer.

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently,

the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 17, 2010, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

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

Sincerely,



David A. Rosen

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Pro-Source Performance Products, Inc. dba ProSource and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

**Re: Environmental Research Center's Notice of Proposition 65 Violations
by Pro-Source Performance Products, Inc. dba ProSource**

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, David A. Rosen, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the 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 alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultants, 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 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 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: May 17, 2013



David A. Rosen

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

May 17, 2013

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CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 17, 2013, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

President or CEO
Pro-Source Performance Products, Inc. dba ProSource
2231 Landmark Place
Manasquan, NJ 08736

Robert Chinery, Jr.
(Registered Agent for Pro-Source Performance
Products, Inc. dba ProSource)
1490 Rte 37 East
Toms River, NJ 08753

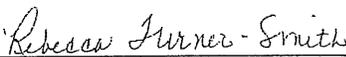
Robert Chinery, Jr.
(Registered Agent for Pro-Source Performance
Products, Inc. dba ProSource)
2231 Landmark Place
Manasquan, NJ 08736

On May 17, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2013, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on May 17, 2013, in Fort Oglethorpe, Georgia.



Rebecca Turner-Smith

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

May 17, 2013

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Service List

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

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

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

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center Drive, 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
550 W. Main 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
Post Office Box 1131
Salinas, CA 93902

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 West Civic Center Drive
Santa Ana, CA 92701

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
3960 Orange Street
Riverside, CA 92501

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

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, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, 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
1112 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
1355 West Street
Redding, CA 96001

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 95354

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 Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

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

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

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

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

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

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