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8 Attorneys for Plaintiff Environmental Research Center

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JAN 23 2014

CLERK OF THE SUPERIOR COURT  
By Rosa-Angela Snock  
Deputy

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

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

13 **Plaintiff,**

14 **vs.**

15 **HEALTHWEST MINERALS, INC., dba MT.**  
16 **CAPRA PRODUCTS, MT. CAPRA CHEESE**  
17 **and DOES 1-100,**

18 **Defendants.**

CASE NO. RC 14 - 711281

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

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

19  
20 Plaintiff Environmental Research Center hereby alleges:

21 **I**

22 **INTRODUCTION**

23 1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this  
24 action as a private attorney general enforcer and in the public interest pursuant to Health & Safety  
25 Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and  
26 civil penalties to remedy Defendants' Healthwest Minerals, Inc., dba Mt. Capra Products and  
27 Mt. Capra Cheese's (hereinafter "Healthwest") failure to warn consumers that they have  
28

1 been exposed to lead from various nutritional health products sold to California consumers by the  
2 company. Lead is a chemical known to the State of California to cause cancer, birth defects and  
3 other reproductive harm. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986  
4 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65," businesses with ten  
5 or more employees must provide a "clear and reasonable warning" prior to exposing persons to  
6 these chemicals.

## 7 II

### 8 PARTIES

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

13 3. Defendant Healthwest is a business that manufactures, distributes and/or sells nutritional  
14 health products that have exposed users to lead in the State of California within the relevant statute  
15 of limitations period. These "Covered Products" are: Mt. Capra Products Yo-Quick! Sensational  
16 Strawberry Goat Milk Yogurt, Mt. Capra Products Capra Mineral Whey, Mt. Capra Products  
17 CapraGreens, Mt. Capra Products Caprotein, Mt. Capra Products Deep2 30 Strawberry Splash, Mt.  
18 Capra Products Double Bonded Protein Dark Chocolate, Mt. Capra Products Capra Flex, Mt. Capra  
19 Products CapraCleanse, Mt. Capra Products CapraZyme, Mt. Capra Products Deep2 30 Coconut  
20 Dream, and Mt. Capra Products Deep2 30 Banana Smoothie. Healthwest is a company subject to  
21 Proposition 65 as it employs ten or more persons.

## 22 III

### 23 JURISDICTION AND VENUE

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

26 5. The Complaint is based on allegations contained in Notices of Violation dated May  
27 17, 2013 and September 13, 2013, served on the California Attorney General, other public  
28 enforcers and Healthwest. A true and correct copy of the Notices of Violation is attached as

1 Exhibit A. More than 60 days have passed since the Notices of Violation were mailed and no  
2 public enforcement entity has filed a complaint in this case.

3 6. This Court is the proper venue for the action because the causes of action have arisen in  
4 the County of Alameda where some of the violations of law have occurred. Furthermore, this Court  
5 is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section  
6 25249.7.

#### 7 IV

### 8 STATUTORY BACKGROUND

#### 9 A. Proposition 65

10 7. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
11 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.

12 8. The warning requirement of Proposition 65 is contained in Health & Safety Code section  
13 25249.6, which provides:

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

18 9. Implementing regulations for Proposition 65 define expose as "to cause to ingest, inhale,  
19 contact via body surfaces or otherwise come into contact with a listed chemical." An individual  
20 may come into contact with a listed chemical through water, air, food, consumer products and any  
21 other environmental exposure as well as occupational exposures." (Cal. Code Regs., tit. 27, §  
22 25102, subd. (i).)

23 10. In this case, the exposures at issue are caused by consumer products. Implementing  
24 regulations for Proposition 65 define a consumer product exposure as " an exposure which results  
25 from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of  
26 a consumer good, or any exposure that results from receiving a consumer service." (Cal. Code  
27 Regs., tit. 27, § 25602, subd. (b).)

28 11. Whenever a clear and reasonable warning is required under Health & Safety Code

1 section 25249.6, the “method employed to transmit the warning must be reasonably calculated  
2 considering the alternative methods available under the circumstances, to make the warning  
3 message available prior to exposure.” (Cal. Code Regs., tit. 27, § 25601.) The warning requirement  
4 may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling,  
5 signs, a system of signs, public advertising identifying the system and toll-free information services,  
6 or any other, system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §  
7 25603.1, subd. (a)-(d).)

8 12. Proposition 65 establishes a procedure by which the State is to develop a list of  
9 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,  
10 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the  
11 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead  
12 was listed as a chemical known to the State of California to cause developmental toxicity in the  
13 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a  
14 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.  
15 27, § 27001.)

16 13. The Maximum Allowable Dose Level for lead as a chemical known to cause  
17 reproductive toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No  
18 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.  
19 27, § 25705.)

20 14. Proposition 65 may be enforced by any person in the public interest who provides  
21 notice sixty days before filing suit to both the violator and designated law enforcement officials.  
22 The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed  
23 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

24 15. Proposition 65 provides that any person “violating or threatening to violate” Proposition  
25 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,  
26 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial  
27 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)  
28

1 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.  
2 (Health & Safety Code, § 25249.7, subd. (b)(1).

3  
4 **V**

5 **STATEMENT OF FACTS**

6 16. Healthwest has manufactured, distributed and/or sold the Covered Products  
7 containing lead to the State of California. Consumers have been ingesting these products since at  
8 least May 17, 2010, for the first Notice of Violation, and at least September 13, 2010 for the  
9 second Notice of Violation, without any knowledge of their exposure to lead, a very dangerous  
10 chemical. Healthwest specializes in producing various goat milk products. The company  
11 produces goat milk protein supplements as well as mineral and sports drink supplements.

12 17. Healthwest's website notes that "we specialize in producing premium quality goat milk  
13 products. All of the products we manufacture from goat milk are the freshest and of the highest  
14 quality possibility. Our formulas utilize organic and natural ingredients along with advanced  
15 research to provide the consumer with the highest quality products available today. Combining  
16 traditional wisdom with novel ingredients is our way of life." The website also contains a list of  
17 experts with their credentials in nutrition and other health fields further conveying to the consumer  
18 the impression that the products are pure.

19 18. For many years, Healthwest has knowingly and intentionally exposed numerous  
20 persons to lead, without providing a Proposition 65 warning. Healthwest failed to provide a  
21 warning on the label of the Covered Products. There is no mention of lead in the company website.  
22 Healthwest has at all times relevant hereto been aware that the Covered Products contained lead and  
23 that persons using this product have been exposed to the chemical. Healthwest has been aware of  
24 lead in the Covered Products and has failed to disclose the presence of this chemical to the public,  
25 who undoubtedly believed they have been ingesting totally healthy and pure products.

26 19. Both prior and subsequent to ERC's Notices of Violation, Healthwest failed to provide  
27 consumers of the Covered Products with a clear and reasonable warning that they have been  
28 exposed to a chemical known to the State of California to cause cancer, birth defects and other

1 reproductive harm.

2 **FIRST CAUSE OF ACTION**

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

5 20. ERC refers to paragraphs 1-19, inclusive, and incorporates them herein by this  
6 reference.

7 21. By committing the acts alleged above, Healthwest has, in the course of doing business,  
8 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to  
9 the State of California to cause cancer, birth defects and other reproductive harm without first giving  
10 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code  
11 section 25249.6.

12 22. Said violations render Healthwest liable for civil penalties up to \$2,500 per day, for  
13 each violation.

14 **SECOND CAUSE OF ACTION**

15 **(Declaratory Relief)**

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

18 24. There exists an actual controversy relating to the legal rights and duties of the parties,  
19 within the meaning of Code of Civil Procedure section 1060, between ERC and Healthwest  
20 concerning whether the company has exposed individuals to a chemical known to the State of  
21 California to cause cancer, birth defects and other reproductive harm without providing clear and  
22 reasonable warning.

23 **VI**

24 **PRAYER**

25 WHEREFORE ERC 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;

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

5           3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
6 Procedure section 1060 declaring that Healthwest has exposed individuals to a chemical known to  
7 the State of California to cause, birth defects and other reproductive harm without providing clear  
8 and reasonable warning; and

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

11           5. For costs of suit herein; and

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

13  
14 Dated: January 20, 2014

15  
16           By



17  
18           \_\_\_\_\_  
19           Michael Freund  
20           Attorney for Environmental Research Center

EXHIBIT A



MICHAEL FREUND  
ATTORNEY AT LAW  
1919 Addison Street, Suite 105  
BERKELEY, CALIFORNIA 94704-101

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

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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 Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

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

**Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese**

**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:

**Mt. Capra Products Yo-Quick! Sensational Strawberry Goat Milk Yogurt – Lead**  
**Mt. Capra Products Capra Mineral Whey – Lead**  
**Mt. Capra Products CapraGreens – Lead**  
**Mt. Capra Products Caprotein – Lead**  
**Mt. Capra Deep2 30 Strawberry Splash – Lead**  
**Mt. Capra Products Double Bonded Protein Dark Chocolate – Lead**  
**Mt. Capra Products CapraFlex – Lead**  
**Mt. Capra Products CapraCleanse – Lead**  
**Mt. Capra Products CapraZyme**

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,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese 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 Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

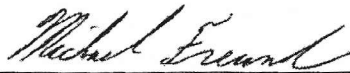
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: May 17, 2013



---

Michael Freund

**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:

Current President or CEO  
Healthwest Minerals, Inc.  
114 W Magnolia  
Centralia, WA 98531

T. Charles Althausser  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
114 W Magnolia  
Centralia, WA 98531

Current President or CEO  
Healthwest Minerals, Inc.  
PO Box 210  
Centralia, WA 98531

Frank T. Stout  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

Current President or CEO  
Healthwest Minerals, Inc.  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

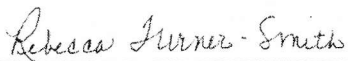
Current President or CEO  
Mt. Capra Cheese  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

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

Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Orville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

**MICHAEL FREUND**

ATTORNEY AT LAW  
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BERKELEY, CALIFORNIA 94704-101

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

September 13, 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, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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**Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese**

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:

**Mt. Capra Products Deep2 30 Coconut Dream – Lead**  
**Mt. Capra Products Deep2 30 Banana Smoothie – 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

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

September 13, 2013

Page 2


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 September 13, 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,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese and its Registered Agent for Service of Process only)

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

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 September 13, 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:

Current President or CEO  
Healthwest Minerals, Inc.  
114 W Magnolia  
Centralia, WA 98531

T. Charles Althausser  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
114 W Magnolia  
Centralia, WA 98531

Current President or CEO  
Healthwest Minerals, Inc.  
PO Box 210  
Centralia, WA 98531

Frank T. Stout  
(Healthwest Minerals, Inc.'s Registered  
Agent for Service of Process)  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

Current President or CEO  
Healthwest Minerals, Inc.  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

Current President or CEO  
Mt. Capra Cheese  
279 SW 9<sup>th</sup> Street  
Chehalis, WA 98532

On September 13, 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://cag.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 September 13, 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 September 13, 2013, in Fort Oglethorpe, Georgia.

  
Tiffany Capehart



CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Healthwest Minerals, Inc. dba Mt. Capra Products and Mt. Capra Cheese

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

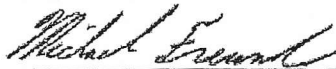
2. I am an attorney for the noticing party.

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 chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: September 13, 2013



Michael Freund

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 <sup>rd</sup> Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	