

1 Michael Freund SBN 99687
2 Ryan Hoffman SBN 283297
3 Michael Freund & Associates
4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
6 Telephone: (510) 540-1992
7 Facsimile: (510) 540-5543

8 Attorneys for Plaintiff Environmental Research Center

FILED

DEC 10 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

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

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

14 **Plaintiff,**

15 **vs.**

16 **CHEMI-SOURCE, INC. DBA MRM and**
17 **DOES 1-100**

18 **Defendants.**

19 **CASE NO.**

CV 1305023

20 **COMPLAINT FOR INJUNCTIVE**
21 **AND DECLARATORY RELIEF AND**
22 **CIVIL PENALTIES**

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

26 Plaintiff Environmental Research Center hereby alleges:

27 **I**

28 **INTRODUCTION**

1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and civil penalties to remedy Chemi-Source, Inc. dba MRM (hereinafter "Chemi-Source")'s failure to warn consumers that they have been exposed to lead from several of Chemi-Source's nutritional health products. Lead is a chemical known to the State of California to cause cancer, birth defects

1 and other reproductive harm. Based on the Safe Drinking Water and Toxic Enforcement Act of
2 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,” businesses
3 with ten or more employees must provide a “clear and reasonable warning” prior to exposing
4 persons to these chemicals.

5 II

6 PARTIES

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

11 3. Defendant Chemi-Source is a business that manufactures, distributes and/or sells
12 nutritional health products that have exposed users to lead in the State of California within the
13 relevant statute of limitations period. These “Covered Products” are MRM TribuPlex 750 60
14 Capsules, MRM H2O Lean 60 Capsules, MRM ChoLESSStat 60 Capsules, MRM Tribest 750 60
15 capsules, MRM Joint Synergy + 120 Capsules, MRM Turbo Driven Rocket Berry, MRM Condition
16 Specific Relax-All with Phenibut, MRM Gut Rehab, MRM Veggie Protein Vanilla, MRM Veggie
17 Protein Chocolate, and MRM Condition Specific Joint Synergy + With Noto-Gin. Chemi-Source is
18 a company subject to Proposition 65 as it employs ten or more persons.

19 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
20 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of
21 said Does is responsible, in some actionable manner, for the events and happenings hereinafter
22 referred to, either through said Defendant’s conduct, or through the conduct of its agents, servants or
23 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
24 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
25 to set forth the same.

26 III

27 JURISDICTION AND VENUE

28 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10

1 because this case is a cause not given by statute to other trial courts.

2 6. The Complaint is based on allegations contained in Notices of Violation dated March
3 11, 2011 and July 19, 2013, served on the California Attorney General, other public enforcers
4 and Chemi-Source. True and correct copies of these Notices of Violation are attached as Exhibit
5 A. More than 60 days have passed since these Notices of Violation were mailed and no public
6 enforcement entity has filed a complaint in this case.

7 7. This Court is the proper venue for the action because the causes of action have arisen in
8 the County of Marin where some of the violations of law have occurred. Furthermore, this Court is
9 the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section
10 25249.7.

11 IV

12 STATUTORY BACKGROUND

13 A. Proposition 65

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

16 9. The warning requirement of Proposition 65 is contained in Health & Safety Code section
17 25249.6, which provides:

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

21 10. Implementing regulations for Proposition 65 define expose as "to cause to ingest,
22 inhale, contact via body surfaces or otherwise come into contact with a listed chemical." An
23 individual may come into contact with a listed chemical through water, air, food, consumer products
24 and any other environmental exposure as well as occupational exposures." (Cal. Code Regs., tit. 27,
25 § 25102, subd. (i).)

26 11. In this case, the exposures at issue are caused by consumer products. Implementing
27 regulations for Proposition 65 define a consumer product exposure as " an exposure which results
28 from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of

1 a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
2 Regs., tit. 27, § 25602, subd. (b).)

3 12. Whenever a clear and reasonable warning is required under Health & Safety Code
4 section 25249.6, the “method employed to transmit the warning must be reasonably calculated
5 considering the alternative methods available under the circumstances, to make the warning
6 message available prior to exposure.” (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
7 may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling,
8 signs, a system of signs, public advertising identifying the system and toll-free information services,
9 or any other, system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
10 25603.1, subd. (a)-(d).)

11 13. Proposition 65 establishes a procedure by which the State is to develop a list of
12 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
13 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
14 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead
15 was listed as a chemical known to the State of California to cause developmental toxicity in the
16 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
17 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.
18 27, § 27001.)

19 14. The Maximum Allowable Dose Level for lead as a chemical known to cause
20 reproductive toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
21 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
22 27, § 25705.)

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

27 16. Proposition 65 provides that any person “violating or threatening to violate” Proposition
28 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,

1 subd. (a.) To “threaten to violate” means “to create a condition in which there is a substantial
2 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
3 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
4 (Health & Safety Code, § 25249.7, subd. (b)(1).

5 V

6 **STATEMENT OF FACTS**

7 17. Chemi-Source has manufactured, distributed and/or sold the Covered Products
8 containing lead into the State of California. Consumers have been ingesting these products for
9 many years, without any knowledge of their exposure to lead, a very dangerous chemical.

10 18. For many years, Chemi-Source has knowingly and intentionally exposed numerous
11 persons to lead. Chemi-Source has at all times relevant hereto been aware that the Covered
12 Products contained lead and that persons using these products have been exposed to the chemical.
13 Chemi-Source employs health professionals holding M.D. and Ph.D. degrees with years of
14 experience in the nutritional supplement industry to research and develop the company’s products.
15 Several of these professionals have purportedly spent their careers specializing in the research and
16 development of nutritional supplement products, and the ingredients of which they are comprised,
17 including analytical testing. Experts with this level of knowledge and experience would
18 undoubtedly be aware that the ingredients used in many nutritional supplement products can contain
19 concentrations of lead that are unsafe, and exceed the limits imposed by Proposition 65. Chemi-
20 Source’s roster of experts in the research and development of nutritional supplement products
21 shows that the company has a thorough knowledge of the contents and composition of its products,
22 which would include knowledge of the presence of lead.

23 19. Chemi-Source has been aware of the lead in the Covered Products, yet the company’s
24 website represents to the public that it’s “sales and marketing team prides themselves on offering
25 ingredient disclosure, illustrating our dedication to the distribution of sound scientific information.”
26 Chemi-Source has failed to disclose the presence of lead in the Covered Products to the public, who
27 undoubtedly believed they have been ingesting totally healthy and pure products. Both prior and
28 subsequent to ERC’s Notice of Violation, Chemi-Source failed to provide consumers of the

1 Covered Products with a clear and reasonable warning that they have been exposed to a chemical
2 known to the State of California to cause cancer, birth defects and other reproductive harm. Some
3 time after July of 2013, Chemi-Source created a section on its web site entitled "Proposition 65". In
4 this section the company attempts to downplay and marginalize the significance of Proposition 65,
5 and strongly implies that the presence of lead in its products does not raise any concerns regarding
6 their safety for consumption. Further, the web page does not state which of Chemi-Source's
7 products contain lead. Accordingly, the statements on Chemi-Source's web site do not constitute a
8 warning for purposes of Proposition 65.

9 **FIRST CAUSE OF ACTION**

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

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

14 21. By committing the acts alleged above, Chemi-Source has, in the course of doing
15 business, knowingly and intentionally exposed users of the Covered Products to lead, a chemical
16 known to the State of California to cause cancer, birth defects and other reproductive harm without
17 first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety
18 Code section 25249.6.

19 22. Said violations render Chemi-Source liable for civil penalties up to \$2,500 per day,
20 for each violation.

21 **SECOND CAUSE OF ACTION**

22 **(Declaratory Relief)**

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

25 24. There exists an actual controversy relating to the legal rights and duties of the parties,
26 within the meaning of Code of Civil Procedure section 1060, between ERC and Chemi-Source
27 concerning whether Chemi-Source has exposed individuals to a chemical known to the State of
28

1 California to cause cancer, birth defects and other reproductive harm without providing clear and
2 reasonable warning.

3 VI

4 PRAYER

5 WHEREFORE ERC prays for relief as follows:

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

8 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
9 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders,
10 or other orders, prohibiting Chemi-Source from exposing persons to lead without providing clear
11 and reasonable warning;

12 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
13 Procedure section 1060 declaring that Chemi-Source has exposed individuals to a chemical known
14 to the State of California to cause, birth defects and other reproductive harm without providing clear
15 and reasonable warning; and


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

18 5. For costs of suit herein; and

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

20
21 Dated: December 4, 2013

22
23 By



24 Michael Freund
25 Ryan Hoffman
26 Attorneys for Environmental Research Center



Environmental Research Center

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

March 11, 2011

VIA CERTIFIED MAIL

Current CEO or President
Chemi-Source, Inc.
2665 Vista Pacific Drive
Oceanside, CA 92056

Ralph Homan Winter
(Chemi-Source, Inc.'s Registered Agent for
Service of Process)
8105 Irvine Center Drive, Suite 1400
Irvine, CA 92618

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

Re: Notice of Violation against Chemi-Source, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Tel. (619) 309-4194, Executive Director: Chris Heptinstall. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Chemi-Source, Inc.

This letter constitutes notification that Chemi-Source, Inc. located at 2665 Vista Pacific Drive, Oceanside, CA 92056 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this Company has manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since March 11, 2008, as well as every day since the products were introduced in the

Exhibit A

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

March 11, 2011

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California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

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

Chemi-Source, Inc. is exposing people to lead from the following products:

MRM TribuPlex 750 60 Capsules

MRM H2O Lean 60 Capsules

MRM ChoLESSStat 60 Capsules

MRM Tribest 750 60 capsules

MRM Joint Synergy + 120 Capsules

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

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Chemi-Source, Inc. unless they agree in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11th Fl., Los Angeles, CA 90017, 213-629-2071, gk@gideonlaw.net.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 11, 2011
Page 3

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Chemi-Source, 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 Chemi-Source, Inc.

I, Gideon Kracov, declare:

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



Dated: March 11, 2011

Gideon Kracov, Attorney At Law

CERTIFICATE OF SERVICE

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

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

On March 11, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President
Chemi-Source, Inc.
2665 Vista Pacific Dr
Oceanside, CA 92056

Ralph Homan Winter
(Chemi-Source, Inc.'s Registered Agent
for Service of Process)
8105 Irvine Center Drive, Suite 1400
Irvine, CA 92618

On March 11, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

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

On March 11, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on March 11, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Kings County
1400 West Lacey Boulevard
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.*

March 11, 2011

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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

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

LAW OFFICE OF
KAREN A. EVANS
4218 Biona Place
San Diego, CA 92116
Tel: (619) 640-8100
E-Mail: kaevans.erc@gmail.com

July 19, 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 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 Violator identified below.

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

Chemi-Source, Inc.

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:

MRM Turbo Driven Rocket Berry – Lead
MRM Condition Specific Relax-All with Phenibut – Lead
MRM Gut Rehab – Lead
MRM Veggie Protein Vanilla – Lead
MRM Veggie Protein Chocolate – Lead
MRM Condition Specific Joint Synergy + With Noto-Gin – 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.

July 19, 2013

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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 July 19, 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,



Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Chemi-Source, 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 Chemi-Source, Inc.

I, Karen A. Evans, declare:

1. This Certificate of Merit accompanies the attached 60-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 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: July 19, 2013

Karen A. Evans

Karen A. Evans

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 July 19, 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Chemi-Source, Inc.
2665 Vista Pacific Dr
Oceanside, CA 92056

Mark Olsen
(Chemi-Source, Inc.'s Registered Agent
for Service of Process)
2665 Vista Pacific Drive
Oceanside, CA 92056

On July 19, 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 July 19, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on July 19, 2013, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

July 19, 2013

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 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 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 nd 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 rd 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 rd 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 th 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 th 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 th 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 nd 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	