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Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED
FILED
AT ALAMEDA COURT

FEB 03 2016

CLERK OF THE SUPERIOR COURT
Anita Dine
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

6S, INC. dba ALL STAR HEALTH, a
California corporation, VITACOST.COM,
INC., a Delaware corporation,
and DOES 1 – 25,

Defendants.

Case No. *LG16802586*

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
OTHER RELIEF**

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

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

INTRODUCTION

1. This action seeks to remedy the continuing failure of Defendants 6S, INC. dba ALL STAR HEALTH ("ALL STAR HEALTH"), VITACOST.COM, INC., ("VITACOST") and DOES 1-25 (hereinafter individually referred to as "DEFENDANT" or collectively as "DEFENDANTS") to warn consumers in California that they are being exposed to lead, a

COPY

FAXED

1 substance known to the State of California to cause cancer, birth defects, and other reproductive
2 harm. According to California's Safe Drinking Water and Toxics Enforcement Act of 1986,
3 Health and Safety Code ("H&S Code") section 25249.5 (also known as and referred to
4 hereinafter as "Proposition 65"), businesses must provide persons with a "clear and reasonable
5 warning" before exposing individuals to chemicals known to the state to cause cancer or
6 reproductive harm. DEFENDANTS manufacture, package, distribute, market, and/or sell in
7 California certain products containing lead (the "SUBJECT PRODUCTS"):

8 ALL STAR HEALTH

- 9 • Myogenix Inc. After Shock Critical Mass Chocolate Milk Shake
- 10 • Myogenix Inc. After Shock Critical Mass Cookies N' Cream Milk Shake
- 11 • Myogenix Inc. Pro Enzyme + Fiber
- 12 • Myogenix Inc. Liver Support Extra Strength
- 13 • Myogenix Inc. AdiPro Max Appetite Control +

14 VITACOST

- 15 • Myogenix Inc. Pro Enzyme + Fiber
- 16 • Myogenix Inc. Liver Support Extra Strength

17 2. Lead (hereinafter, the "LISTED CHEMICAL") is a substance known to the State of
18 California to cause cancer, birth defects, and other reproductive harm.

19 3. The use and/or handling of the SUBJECT PRODUCTS causes exposures to the
20 LISTED CHEMICAL at levels requiring a "clear and reasonable warning" under Proposition
21 65. DEFENDANTS exposed consumers, users and handlers to the LISTED CHEMICAL and
22 have failed to provide the health hazard warnings required by Proposition 65.

23 4. DEFENDANTS' continued manufacturing, packaging, distributing, marketing
24 and/or sales of the SUBJECT PRODUCTS without the required health hazard warnings, causes
25 individuals to be involuntarily, unknowingly and unwittingly exposed to levels of the LISTED
26 CHEMICAL that violate Proposition 65.

27 ///

28 ///

PARTIES

5. PLAINTIFF is a non-profit corporation organized under California Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety, and corporate responsibility.

6. ERC is a person within the meaning of H&S Code §25249.11 and brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d). H&S Code § 25249.7 (d) specifies that actions to enforce Proposition 65 may be brought by a person in the public interest, provided certain notice requirements and no other public prosecutor is diligently prosecuting an action for the same violation(s).

7. ALL STAR HEALTH is now, and was at all times relevant herein, a corporation organized under the laws of California and is doing business within the meaning of H&S Code §25249.11.

8. VITACOST is now, and was at all times relevant herein, a corporation organized under the laws of Delaware and is doing business within the meaning of H&S Code §25249.11.

9. DEFENDANTS own, administer, direct, control and/or operate facilities and/or agents, distributors sellers, marketers or other retail operations who place its SUBJECT PRODUCTS into the stream of commerce in California (including but not limited to Alameda County) under the brand name MYOGENIX INC. and other brand names, which contain the LISTED CHEMICAL without first giving clear and reasonable warnings.

10. DEFENDANTS, separately and each of them, are or were, at all times relevant to the claims in this Complaint and continuing through the present, legally responsible for compliance with the provisions of Proposition 65. Whenever an allegation regarding any act of a DEFENDANT is made herein, such allegation shall be deemed to mean that DEFENDANT, or its agent, officer, director, manager, supervisor or employee did or so authorized such acts while engaged in the affairs of DEFENDANT's business operations and/or while acting within the course and scope of their employment or while conducting business for DEFENDANT(S) for a commercial purpose.

11. In this Complaint, when reference is made to any act of a DEFENDANT, such

1 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
2 representatives of DEFENDANT acted or authorized such actions, and/or negligently failed and
3 omitted to act or adequately and properly supervise, control or direct its employees and agents
4 while engaged in the management, direction, operation or control of the affairs of the business
5 organization. Whenever reference is made to any act of any DEFENDANT, such allegation shall
6 be deemed to mean the act of each DEFENDANT acting individually, jointly and severally as
7 defined by Civil Code Section 1430 *et seq.*

8 12. PLAINTIFF does not know the true names, capacities and liabilities of
9 DEFENDANT's DOES Nos. 1-25, inclusive, and therefore sues them under fictitious names.
10 PLAINTIFF will amend this Complaint to allege the true name and capacities of the DOE
11 Defendants upon being ascertained. Each of these Defendants was in some way legally
12 responsible for the acts, omissions and/or violations alleged herein.

13 **JURISDICTION AND VENUE**

14 13. This Court has jurisdiction over this action pursuant to California Constitution Article
15 VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those
16 given by statute to other trial courts." The statute under which this action is brought does not
17 specify any other court with jurisdiction.

18 14. This Court has jurisdiction over DEFENDANTS because they are business entities
19 that do sufficient business, have sufficient minimum contacts in California or otherwise
20 intentionally avail themselves of the California market, through the sale, marketing and use of
21 their SUBJECT PRODUCTS in California, to render the exercise of jurisdiction over them by
22 the California courts consistent with traditional notions of fair play and substantial justice.

23 15. Venue in this action is proper in the Alameda County Superior Court because the
24 cause, or part thereof, arises in the County of Alameda since DEFENDANTS' products are
25 marketed, offered for sale, sold, used, and/or consumed in this county.

26 **STATUTORY BACKGROUND**

27 16. The People of the State of California declared in Proposition 65 their right "[t]o be
28 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive

1 harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

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

9 18. An exposure to a chemical in a consumer product is one "which results from a
10 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
11 consumer good, or any exposure that results from receiving a consumer service." (Cal. Code
12 Regs., tit. 22, § 12601, subd. (b).)

13 19. Proposition 65 provides that any "person who violates or threatens to violate" the
14 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase
15 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
16 probability that a violation will occur" (H&S Code §25249.11(e)). Violators are liable for civil
17 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

18 **FACTUAL BACKGROUND**

19 20. On February 27, 1987, the State of California officially listed lead as a chemical
20 known to cause reproductive toxicity. Lead became subject to the warning requirement one year
21 later and was therefore subject to the "clear and reasonable" warning requirements of Proposition
22 65 beginning on February 27, 1988. (27 California Code of Regulations ("CCR") §25000, *et*
23 *seq.*; H&S Code §25249.5, *et seq.*).

24 21. On October 1, 1992, the State of California officially listed lead and lead compounds
25 as chemicals known to cause cancer. Lead and lead compounds became subject to the warning
26 requirement one year later and were therefore subject to the "clear and reasonable" warning
27 requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et seq.*; H&S
28 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 and the no significant risk level

1 for carcinogens is 15ug/day (oral).

2 22. To test DEFENDANTS' SUBJECT PRODUCTS for lead, PLAINTIFF hired a well-
3 respected and accredited testing laboratory that designed the testing protocol used and approved
4 by the California Attorney General years ago for testing heavy metals. The results of testing
5 undertaken by PLAINTIFF of DEFENDANTS' SUBJECT PRODUCTS show that the
6 SUBJECT PRODUCTS tested were in violation of the 0.5 ug/day and/or 15 ug/day "safe harbor"
7 daily dose limits set forth in Proposition 65's regulations. Very significant is the fact that people
8 are being exposed to lead through ingestion as opposed to other not as harmful methods of
9 exposure such as dermal exposure. Ingestion of lead produces much higher exposure levels and
10 health risks than does dermal exposure to this chemical.

11 23. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and
12 intentionally exposed the users, consumers and/or handlers of the SUBJECT PRODUCTS to the
13 LISTED CHEMICAL without first giving a clear and reasonable warning to such individuals.

14 24. The SUBJECT PRODUCTS have allegedly been sold by DEFENDANTS for use
15 in California since at least August 28, 2012. The SUBJECT PRODUCTS continue to be
16 distributed and sold in California without the requisite warning information.

17 25. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
18 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
19 State of California, including in the County of Alameda have been exposed to the LISTED
20 CHEMICAL without a clear and reasonable warning on the SUBJECT PRODUCTS. The
21 individuals subject to the violative exposures include normal and foreseeable users of the
22 SUBJECT PRODUCTS, as well as all other persons exposed to the SUBJECT PRODUCTS.

23 26. On August 28, 2015, ERC served each of the DEFENDANTS and each of the
24 appropriate public enforcement agencies with a document entitled "Notice of Violations of
25 California Health & Safety Code Section 25249.5" that provided DEFENDANTS and the public
26 enforcement agencies with notice that DEFENDANTS were in violation of Proposition 65 for
27 failing to warn purchasers and individuals using the SUBJECT PRODUCTS that the use of the
28 SUBJECT PRODUCTS exposes them to lead, a chemical known to the State of California to

1 cause cancer and/or reproductive toxicity ("Prop. 65 Notice"). A true and correct copy of the 60-
2 Day Notices ("NOTICES") are attached hereto as Exhibits A and B are hereby incorporated by
3 reference, and are available on the Attorney General's website located at
4 <http://oag.ca.gov/prop65>.

5 27. The NOTICES were issued pursuant to, and in compliance with, the requirements of
6 H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the
7 violations to be given to certain public enforcement agencies and to the violator. The NOTICE
8 included, *inter alia*, the following information: the name, address, and telephone number of the
9 noticing individual; the name of the alleged violator; the statute violated; the approximate time
10 period during which violations occurred; and descriptions of the violations including the
11 chemicals involved, the routes of toxic exposure, and the specific product or type of product
12 causing the violations.

13 28. ALL STAR HEALTH and VITACOST were also provided copies of the document
14 entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
15 Summary," which is also known as Appendix A to Title 27 of CCR §25903, via Certified Mail.

16 29. The California Attorney General was provided a copy of the NOTICE and a Certificate
17 of Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious
18 case for this action, and attaching factual information sufficient to establish a basis for the
19 certificate, including the identity of the persons consulted with and relied on by the certifier, and
20 the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §25249.7(h)
21 (2) via online submission.

22 30. After expiration of the sixty (60) day notice period, The appropriate public
23 enforcement agencies have failed to commence and diligently prosecute a cause of action under
24 H&S Code §25249.5, *et seq.* against DEFENDANTS based on the allegations herein.

25 **FIRST CAUSE OF ACTION**
26 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
27 **the PRODUCTS described in the August 28, 2015, Prop. 65 Notice of Violation)**
28 **Against DEFENDANTS**

32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31,

1 inclusive, as if specifically set forth herein.

2 33. By committing the acts alleged in this Complaint, DEFENDANTS at all times
3 relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by,
4 in the course of doing business, knowingly and intentionally exposing individuals in California
5 to chemicals known to the State of California to cause cancer or reproductive toxicity without
6 first giving clear and reasonable warnings to such persons who use, consume or handle the
7 SUBJECT PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code §§
8 25249.6 and 25249.11(f).

9 34. By the above-described acts, DEFENDANTS have violated H&S Code § 25249.6
10 and are therefore subject to preliminary and permanent injunctions ordering DEFENDANTS to
11 stop violating Proposition 65, to provide warnings to all present and future customers, and to
12 provide warnings to DEFENDANTS' past customers who purchased or used the SUBJECT
13 PRODUCTS without receiving a clear and reasonable warning.

14 35. An action for injunctive relief under Proposition 65 is specifically authorized by
15 H&S Code §25249.7(a).

16 36. Continuing commission by DEFENDANTS of the acts alleged above will
17 irreparably harm the citizens of the State of California, for which harm they have no plain, speedy,
18 or adequate remedy at law.

19 37. In the absence of preliminary and then permanent injunctive relief,
20 DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to
21 cause consumers to be involuntarily, unknowingly and unwittingly exposed to the LISTED
22 CHEMICAL through the use, consumption and/or handling of the PRODUCTS.

23 **SECOND CAUSE OF ACTION**

24 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
25 **PRODUCTS described in the August 28, 2015, Prop. 65 Notice of Violation)**
26 **Against DEFENDANTS**

27 38. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 37,
28 inclusive, as if specifically set forth herein.

39. By committing the acts alleged in this Complaint, DEFENDANTS at all times

1 relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by,
2 in the course of doing business, knowingly and intentionally exposing individuals in California
3 to chemicals known to the State of California to cause cancer or reproductive toxicity without
4 first giving clear and reasonable warnings to such persons who use, consume or handle the
5 SUBJECT PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code §§
6 25249.6 and 25249.11(f).

7 40. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
8 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure
9 to the LISTED CHEMICAL from the SUBJECT PRODUCTS, in an amount in excess of \$1
10 million.

11 **THE NEED FOR INJUNCTIVE RELIEF**

12 41. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through
13 40, as if set forth below.

14 42. By committing the acts alleged in this Complaint, DEFENDANTS have caused
15 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
16 of equitable relief, DEFENDANTS will continue to create a substantial risk of irreparable injury
17 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
18 CHEMICAL through the use and/or handling of the SUBJECT PRODUCTS.

19 **PRAYER FOR RELIEF**

20 Wherefore, PLAINTIFF prays for the following relief:

21 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
22 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
23 participating with DEFENDANTS, from manufacturing, distributing, marketing or selling the
24 SUBJECT PRODUCTS in California without first providing a clear and reasonable warning,
25 within the meaning of Proposition 65, that the users and/or handlers of the SUBJECT
26 PRODUCTS are exposed to the LISTED CHEMICAL;

27 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
28 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS since

1 June 5, 2012, and to provide a warning to such person that the use of the SUBJECT PRODUCTS
2 will expose the user to chemicals known to cause cancer, birth defects, and other reproductive
3 harm;

4 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
5 against DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65, in
6 an amount in excess of \$1 million, according to proof;

7 D. An award to PLAINTIFF of its reasonable attorney's fees and costs of suit
8 pursuant to California Code of Civil Procedure §§ 1032 *et. seq* and 1021.5, as PLAINTIFF shall
9 specify in further applications to the Court; and,

10 E. Such other and further relief as may be just and proper.

11
12 DATED: February 3, 2016

AQUA TERRA AERIS LAW GROUP

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15 Matthew C. Maclear
16 Anthony M. Barnes
17 Attorneys for Plaintiff
18 Environmental Research Center, Inc.
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EXHIBIT A



Mathew M. Maclear
mcm@atalawgroup.com
415.568.5200

August 28, 2015

**NOTICE OF VIOLATION 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, Inc. ("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:

Vitacost.com, Inc.

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

- 1. Myogenix Inc. Pro Enzyme + Fiber - Lead**
- 2. Myogenix Inc. Liver Support Extra Strength - 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.



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

August 28, 2015

Page 2

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 this chemical 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 August 28, 2012, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

Matthew Maclear

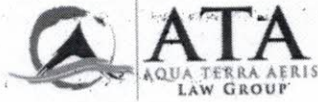
Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Vitacost.com, Inc. and its Registered Agents for Service of Process only)

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
August 28, 2015
Page 3

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Vitacost.com, Inc.

I, Matthew Maclear, 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 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: August 28, 2015

Matthew Maclear



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

August 28, 2015

Page 4

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 August 28, 2015, I served the following documents: **NOTICE OF VIOLATION 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 CEO or President
Vitacost.com, Inc.
5400 Broken Sound Parkway NW,
Suite 500
Boca Raton, FL 33487

Corporation Service Company
(Vitacost.com, Inc.'s Registered
Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Corporation Service Company
(Vitacost.com, Inc.'s Registered
Agent for Service of Process)
1201 Hays Street
Tallahassee, FL 32301

On August 28, 2015, I verified the following documents **NOTICE OF VIOLATIONS, 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)** were served on the following party when a true and correct copy thereof was uploaded 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 August 28, 2015, 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 August 28, 2015, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads 'Phyllis Dunwoody'.

Phyllis Dunwoody



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

August 28, 2015

Page 5

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
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
201 Commercial 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



Mathew M. Maclear
mcm@atalawgroup.com
415.568.5200

August 28, 2015

**NOTICE OF VIOLATION 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, Inc. ("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:

6S, Inc. dba All Star Health

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

1. **Myogenix Inc. After Shock Critical Mass Chocolate Milk Shake - Lead**
2. **Myogenix Inc. After Shock Critical Mass Cookies N' Cream Milk Shake - Lead**
3. **Myogenix Inc. Pro Enzyme + Fiber - Lead**
4. **Myogenix Inc. Liver Support Extra Strength - Lead**
5. **Myogenix Inc. AdiPro Max Appetite Control + - 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.



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

August 28, 2015

Page 2

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 this chemical 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 August 28, 2012, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew Maclear". The signature is written in a cursive, flowing style.

Matthew Maclear

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to 6S, Inc. dba All Star Health and its Registered Agent for Service of Process only)

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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
August 28, 2015
Page 3

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by 6S, Inc. dba All Star Health

I, Matthew Maclear, 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 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.

A handwritten signature in dark ink, appearing to read "Maclear", written over a horizontal line.

Dated: August 28, 2015

Matthew Maclear



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

August 28, 2015

Page 4

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 August 28, 2015, I served the following documents: **NOTICE OF VIOLATION 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
6S, Inc. dba All Star Health
5951 Skylab Road
Huntington Beach, CA 92647

Current President or CEO
6S, Inc. dba All Star Health
9641 Lark Circle
Fountain Valley, CA 92708

Javier M. Scalini
(6S, Inc. dba All Star Health's Registered Agent
for Service of Process)
9641 Lark Circle
Fountain Valley, CA 92708

On August 28, 2015, I verified the following documents **NOTICE OF VIOLATIONS, 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)** were served on the following party when a true and correct copy thereof was uploaded 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 August 28, 2015, 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 August 28, 2015, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads 'Phyllis Dunwoody'.

Phyllis Dunwoody



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

August 28, 2015

Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	District Attorney, Yolo County 301 2nd Street Woodland, CA 95695
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Shasta County 1355 West Street Redding, CA 96001	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971		

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EXHIBIT B

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some

1 exposures are exempt from the warning requirement under certain circumstances discussed
2 below.

3 **Prohibition from discharges into drinking water.** A business must not knowingly discharge or
4 release a listed chemical into water or onto land where it passes or probably will pass into a
5 source of drinking water. Some discharges are exempt from this requirement under certain
6 circumstances discussed below.

7 **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

8 Yes. You should consult the current version of the statute and regulations
9 (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the
10 most common of which are the following:

11 **Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the
12 chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge
13 or release of a chemical that takes place less than 20 months after the listing of the chemical.

14 **Governmental agencies and public water utilities.** All agencies of the federal, state or local
15 government, as well as entities operating public water systems, are exempt.

16 **Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge
17 prohibition applies to a business that employs a total of nine or fewer employees. This includes all
18 employees, not just those present in California.

19 **Exposures that pose no significant risk of cancer.** For chemicals that are listed as known to
20 the State to cause cancer ("carcinogens"), a warning is not required if the business can
21 demonstrate that the exposure occurs at a level that poses "no significant risk." This means that
22 the exposure is calculated to result in not more than one excess case of cancer in 100,000
23 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No
24 Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are
25 exempt from the warning requirement. See OEHHA's website at:
26 <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of
27 the regulations for information concerning how these levels are calculated.

28 **Exposures that will produce no observable reproductive effect at 1,000 times the level in
question.** For chemicals known to the State to cause reproductive toxicity, a warning is not
required if the business can demonstrate that the exposure will produce no observable effect,
even at 1,000 times the level in question. In other words, the level of exposure must be below the
"no observable effect level" divided by 1,000. This number is known as the Maximum Allowable
Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html>
for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how
these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that
occur in foods naturally (i.e., that do not result from any known human activity, including activity
by someone other than the person causing the exposure) are exempt from the warning

requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

² See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).

1 This database is current through 10/17/14 Register 2014, No. 42
2 27 CCR Appendix A, 27 CA ADC Appendix A

3 **END OF**
4 **DOCUMENT**

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Works.

5
6 **Documents In Sequence**

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