

From Wraith_Law_Fax

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ALAMEDA COUNTY

November 21, 2016

CLERK OF
THE SUPERIOR COURT
By Angelica Mendola, Deputy

CASE NUMBER:

RG16839532

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2 WRAITH LAW
3 24422 Avenida de la Carlota, Suite 400
Laguna Hills, CA 92653
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Fax: (949) 452-1102

Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

Case No.

Plaintiff,

v.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

14 MUSCLEPHARM CORPORATION and
DOES 1-25, Inclusive,

[Health & Safety Code §25249.5, et seq.]

Defendants.

**[UNLIMITED CIVIL CASE-AMOUNT
DEMANDED EXCEEDS \$25,000]**

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

INTRODUCTION

21 1. This action seeks to remedy the continuing failure of Defendants
22 MUSCLEPHARM CORPORATION and DOES 1-25 (collectively referred to as
23 "MUSCLEPHARM" or "DEFENDANTS") to warn consumers in California that they are
24 being exposed to lead, a substance known to the State of California to cause cancer, birth
25 defects, and other reproductive harm. MUSCLEPHARM manufactures, packages, distributes,
26 markets, and/or sells in California the following products containing lead (collectively, the

1 “PRODUCTS”):

- 2 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Vanilla
- 3 Malt
- 4 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass
- 5 Chocolate Malt
- 6 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Pump
- 7 Watermelon
- 8 • MusclePharm Corp. Arnold Schwarzenegger Series Arnold Iron Cuts
- 9 • MusclePharm Corp. Arnold Schwarzenegger Muscle Bar Chocolate
- 10 Brownie
- 11 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Peanut
- 12 Butter Cup
- 13 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey
- 14 Cookies 'N' Cream
- 15 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey
- 16 Strawberry Banana
- 17 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey
- 18 Chocolate
- 19 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Vanilla
- 20 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Pack
- 21 • MusclePharm Corp. FitMiss Ignite Orange
- 22 • MusclePharm Corp. FitMiss Ignite Grape
- 23 • MusclePharm Corp. FitMiss Delight Strawberries N' Cream

24 2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the
25 State¹ of California to cause cancer, birth defects, and other reproductive harm.

26

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

1 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
2 CHEMICAL at levels requiring a “clear and reasonable warning” under California's Safe
3 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)
4 §25249.5, *et seq.* (also known as “Proposition 65”). MUSCLEPHARM has failed to provide
5 the health hazard warnings required by Proposition 65.

6 4. MUSCLEPHARM’s past sales and continued manufacturing, packaging,
7 distributing, marketing and/or sales of the PRODUCTS without the required health hazard
8 warnings, cause or threaten to cause individuals to be involuntarily and unwittingly exposed to
9 levels of the LISTED CHEMICAL that violate or threaten to violate Proposition 65.

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

22 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
23 penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by
24 Proposition 65 to remedy MUSCLEPHARM’s failure to provide clear and reasonable warnings
25 regarding exposures to the LISTED CHEMICAL.

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8. This Court has jurisdiction over MUSCLEPHARM because, based on information and belief, MUSCLEPHARM is a business having sufficient minimum contacts with California, or otherwise intentionally availing itself of the California market through the distribution and sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

PARTIES

10. PLAINTIFF is a non-profit corporation organized under California's Corporation 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.

12. Defendant MUSCLEPHARM CORPORATION is a Nevada corporation which ERC alleges on information and belief is a person within the meaning of H&S Code §25249.11(a).

13. MUSCLEPHARM has manufactured, packaged, distributed, marketed, sold, and/or has otherwise been involved in the chain of commerce, and continues to manufacture,

1 package, distribute, market, sell and/or otherwise be involved in the chain of commerce of the
2 PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that
3 Defendant employs ten or more persons, and is a "person in the course of doing business"
4 within the meaning of Proposition 65.

5 14. Defendants DOES 1-25 are named herein under fictitious names, as their true
6 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
7 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
8 has otherwise been involved in the chain of commerce of, and continues to manufacture,
9 package, distribute, market, sell, and/or otherwise be involved in the chain of commerce of the
10 PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for
11 the events and happenings referred to herein, either through its conduct or through the conduct
12 of its agents, servants or employees, or in some other manner, causing the harms alleged
13 herein. Plaintiff will seek leave to amend this Complaint to set forth the true names and
14 capacities of DOES when ascertained.

15 15. Plaintiff is informed and believes and thereon alleges that each Defendant is in
16 some manner responsible for the events set forth in this Complaint and proximately caused the
17 injuries and damages to Plaintiff as alleged in this Complaint.

18 **STATUTORY BACKGROUND**

19 16. The People of the State of California have declared in Proposition 65 their right
20 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
21 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

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

1 18. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of,
2 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
3 knowledge that the discharge, release or exposure is unlawful is required.” (27 California Code
4 of Regulations (“CCR”) § 25102(n).)

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

10 **FACTUAL BACKGROUND**

11 20. On February 27, 1987, the State of California officially listed the chemical lead
12 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
13 requirement one year later and was therefore subject to the “clear and reasonable” warning
14 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
15 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
16 level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR
17 § 25805(b).)

18 21. On October 1, 1992, the State of California officially listed the chemicals lead
19 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
20 subject to the warning requirement one year later and were therefore subject to the “clear and
21 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
22 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
23 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

24 22. On February 19, 2016, PLAINTIFF sent a 60-Day Notice of Proposition 65
25 (“Notice”) violations to the requisite public enforcement agencies, and to MUSCLEPHARM.
26 The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code

1 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to
2 be given to certain public enforcement agencies and to the violators. A true and correct copy
3 of the 60-Day Notice is attached hereto as **Exhibit A** and incorporated by reference. The
4 Notice was issued as follows:

- 5 a. MUSCLEPHARM and the California Attorney General were provided
6 copies of the Notice of Violations, along with a Certificate of Merit by the
7 attorney for the noticing party stating that there is a reasonable and
8 meritorious cause for this action. The requisite county district attorneys and
9 city attorneys were provided copies of the Notice of Violations and
10 Certificate of Merit.
- 11 b. MUSCLEPHARM was provided, with the Notice of Violations, a copy of a
12 document entitled "The Safe Drinking Water and Toxic Enforcement Act of
13 1986 (Proposition 65): A Summary," which is also known as Appendix A to
14 Title 27 of CCR § 25903.
- 15 c. The California Attorney General was provided, with the Notice of
16 Violations, additional factual information sufficient to establish a basis for
17 the Certificate of Merit, including the identity of the persons consulted with
18 and relied on by the certifier, and the facts, studies, or other data reviewed
19 by those persons, pursuant to H&S Code §§25249.7(d)(1) and
20 25249.7(h)(2).

21 23. At least 60-days have elapsed since PLAINTIFF sent the Notice to
22 MUSCLEPHARM. The appropriate public enforcement agencies have failed to commence
23 and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against
24 MUSCLEPHARM based on the allegations herein.

25 24. Plaintiff is informed and believes, and based on such information and
26 belief, alleges the PRODUCTS have been marketed, distributed, and/or sold to

1 individuals in California allegedly been sold by MUSCLEPHARM for use in California
2 without the requisite clear and reasonable warnings before, on, and after February 19,
3 2013. The PRODUCTS continue to be distributed and sold in California without the
4 requisite warning information.

5 25. As a proximate result of acts by MUSCLEPHARM, as a person in the course of
6 doing business within the meaning of H&S Code §25249.11(b), individuals throughout the
7 State of California, including in the County of Alameda, have been exposed to lead without
8 clear and reasonable warnings. The individuals subject to exposures to lead include normal and
9 foreseeable users of the PRODUCTS, as well as all other persons exposed to the PRODUCTS.

10 26. At all times relevant to this action, MUSCLEPHARM has knowingly and
11 intentionally exposed the users and/or handlers of the PRODUCTS to lead without first giving
12 clear and reasonable warnings to such individuals.

13 27. Individuals using or handling the PRODUCTS are exposed to lead in excess of
14 the “maximum allowable daily” and “no significant risk” levels determined by the State of
15 California, as applicable.

16 28. At all times relevant to this action, each Defendant has, in the course of doing
17 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and
18 reasonable warning that the PRODUCTS exposure individuals to lead.

19 29. The PRODUCTS continue to be marketed, distributed, and/or sold in California
20 without the requisite clear and reasonable warnings.

21 **FIRST CAUSE OF ACTION**
22 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
23 **the PRODUCTS described in the February 19, 2016 Prop. 65 Notice)**
24 **Against MUSCLEPHARM**

25 30. PLAINTIFF re-alleges and incorporates by reference each and every
26 preceding allegation and paragraph as though fully set forth in this cause of action.

31. By committing the acts alleged in this Complaint, MUSCLEPHARM, at all

1 times relevant to this action, and continuing through the present, has violated or threatens to
2 violate H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally
3 exposing individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED
4 CHEMICAL, without first providing a clear and reasonable warning to such individuals
5 pursuant to H&S Code §§ 25249.6 and 25249.11(f).

6 32. By the above-described acts, MUSCLEPHARM has violated or threatens to
7 violate H&S Code § 25249.6 and is therefore subject to an injunction ordering
8 MUSCLEPHARM to stop violating Proposition 65, to provide warnings to all present and
9 future customers, and to provide warnings to MUSCLEPHARM's past customers who
10 purchased or used the PRODUCTS without receiving a clear and reasonable warning.

11 33. An action for injunctive relief under Proposition 65 is specifically authorized by
12 Health & Safety Code §25249.7(a).

13 34. Continuing commission by MUSCLEPHARM of the acts alleged above will
14 irreparably harm the citizens of the State of California, for which harm they have no plain,
15 speedy, or adequate remedy at law.

16 35. Wherefore, PLAINTIFF prays for judgment against MUSCLEPHARM, as set
17 forth hereafter.

18 **SECOND CAUSE OF ACTION**
19 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
20 **PRODUCTS described in PLAINTIFF's Notice)**
21 **Against MUSCLEPHARM**

22 36. PLAINTIFF re-alleges and incorporates by reference each and every preceding
23 allegation and paragraph as though fully set forth in this cause of action.

24 37. By committing the acts alleged in this Complaint, MUSCLEPHARM
25 at all times relevant to this action, and continuing through the present, has violated H&S Code
26 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals
who use or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL,

1 without first providing a clear and reasonable warning to such individuals pursuant to H&S
2 Code §§ 25249.6 and 25249.11(f).

3 38. By the above-described acts, MUSCLEPHARM is liable, pursuant to H&S
4 Code §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful
5 exposure to the LISTED CHEMICAL from the PRODUCTS.

6 39. Wherefore, PLAINTIFF prays for judgment against MUSCLEPHARM, as set
7 forth hereafter.

8 **THE NEED FOR INJUNCTIVE RELIEF**

9 40. PLAINTIFF re-alleges and incorporates by this reference each and every
10 preceding allegation and paragraph as though fully set forth in this cause of action.

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

16 **PRAYER FOR RELIEF**

17 Wherefore, PLAINTIFF accordingly prays for the following relief:

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

24 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling
25 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
26 since February 19, 2013, and to provide a warning to such person that the use of the

1 PRODUCTS will expose the user to a chemical known to cause birth defects and other
2 reproductive harm;

3 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
4 against MUSCLEPHARM in the amount of \$2,500 per day for each violation of Proposition
5 65;

6 D. An award to PLAINTIFF of its reasonable attorney's fees and costs pursuant to
7 California Code of Civil Procedure §1021.5 or the substantial benefit theory;

8 E. An award of costs of suit herein; and

9 F. Such other and further relief as may be just and proper.

10 Dated: November 19, 2016

WRAITH LAW

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12

13 By: _____

14 William F. Wraith
15 Attorney for Plaintiff
16 Environmental Research Center, Inc.
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EXHIBIT A

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

February 19, 2016

**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, 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 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 attached 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:

MusclePharm Corporation

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) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Vanilla Malt - Lead**
- 2) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Chocolate Malt - Lead**

- 3) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Pump Watermelon - Lead**
- 4) **MusclePharm Corp. Arnold Schwarzenegger Series Arnold Iron Cuts - Lead**
- 5) **MusclePharm Corp. Arnold Schwarzenegger Muscle Bar Chocolate Brownie - Lead**
- 6) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Peanut Butter Cup - Lead**
- 7) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Cookies 'N' Cream - Lead**
- 8) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Strawberry Banana - Lead**
- 9) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Chocolate - Lead**
- 10) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Vanilla - Lead**
- 11) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Pack - Lead**
- 12) **MusclePharm Corp. FitMiss Ignite Orange - Lead**
- 13) **MusclePharm Corp. FitMiss Ignite Grape - Lead**
- 14) **MusclePharm Corp. FitMiss Delight Strawberries N' Cream - Lead**

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to 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 February 19, 2013, 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

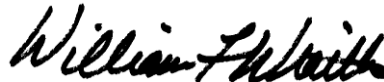
February 19, 2016

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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 Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink, reading "William F. Wraith". The signature is fluid and cursive, with the first name "William" and last name "Wraith" clearly distinguishable.

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to MusclePharm Corporation and its Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

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

I, William F. Wraith, 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 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: February 19, 2016



William F. Wraith

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 February 19, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
MusclePharm Corporation
4721 Ironton Street, Unit A
Denver, CO 80239

VCorp Services, LLC
(MusclePharm Corporation’s Registered
Agent for Service of Process)
1645 Village Center Circle, Suite 170
Las Vegas, NV 89134

Current President or CEO
MusclePharm Corporation
701 Willow Pass Road, Suite 8
Pittsburg, CA 94565

VCorp Services CA, Inc.
(MusclePharm Corporation’s Registered
Agent for Service of Process)
5670 Wilshire Boulevard, Suite 1530
Los Angeles, CA 90036

Current President or CEO
MusclePharm Corporation
200 Beasley Drive
Franklin, TN 37064

On February 19, 2016, 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 February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

February 19, 2016

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Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

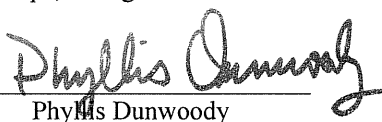
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATIONS, 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 February 19, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

February 19, 2016

Page 7

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, 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, 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, Nevada
County
201 Commercial Street
Nevada City, CA 95959

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County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

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520 Main Street, Room 404
Quincy, CA 95971

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222 E. Weber Ave. Rm. 202
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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 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, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama
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Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

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County
423 N. Washington Street
Sonora, CA 95370

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

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. Please refer 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.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) 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 “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. 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 Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed 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. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say 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 to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

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 causing the exposure 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 Food. Certain exposures to chemicals that naturally occur in foods (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 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 that 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 Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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 to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: February 19, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

☐ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

☐ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

☐ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

☐ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: February 19, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- ☐ Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- ☐ Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- ☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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.

Revised: May 2014

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, 25249.7, 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).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A