

1 RICHARD T. DRURY (CBN 163559)
2 REBECCA L. DAVIS (CBN 271662)
3 LOZEAU | DRURY LLP
4 410 12th Street, Suite 250
5 Oakland, CA 94607
6 Ph: 510-836-4200
7 Fax: 510-836-4205
8 Email: richard@lozeaudrury.com

9 Attorneys for Plaintiff
10 ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

15 Plaintiff,

16 v.

17 IOVATE HEALTH SCIENCES U.S.A. INC.,
18 a Delaware corporation, and IOVATE
19 HEALTH SCIENCES INTERNATIONAL
20 INC., a Canadian corporation,

21 Defendants.

Case No. RG16838524

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

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

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

24 **INTRODUCTION**

25 1. This action seeks to remedy the continuing failure of Defendants IOVATE
26 HEALTH SCIENCES U.S.A. INC. and IOVATE HEALTH SCIENCES INTERNATIONAL
INC. (collectively “IOVATE” or “DEFENDANTS”) to warn consumers in California that they
are being exposed to lead and/or cadmium, substances known to the State of California to
cause cancer, birth defects, and other reproductive harm. DEFENDANTS manufacture,

1 package, distribute, market, and/or sell in California certain products containing lead and/or
2 cadmium. The Notices of Violation dated February 19, 2016, October 31, 2017, November 3,
3 2017, November 9, 2017, and November 10, 2017 (“NOTICES”) identifying these products are
4 attached hereto as Exhibits **A, B, C, D, and E** and are incorporated herein by reference. The
5 products (collectively, the “PRODUCTS”) referenced in the NOTICES are attached hereto as
6 Exhibit **F**.

7 2. Lead and/or cadmium (hereinafter, the “LISTED CHEMICALS”) are
8 substances known to the State¹ of California to cause cancer, birth defects, and other
9 reproductive harm.

10 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
11 CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe
12 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)
13 §25249.5, *et seq.* (also known as “Proposition 65”). DEFENDANTS have failed to provide the
14 health hazard warnings required by Proposition 65.

15 4. DEFENDANTS’ past sales and continued manufacturing, packaging,
16 distributing, marketing and/or sales of the PRODUCTS without the required health hazard
17 warnings, causes or threatens to cause individuals to be involuntarily and unwittingly exposed
18 to levels of the LISTED CHEMICALS that violate or threaten to violate Proposition 65.

19 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANTS from the
20 continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS
21 in California without provision of clear and reasonable warnings regarding the risks of cancer,
22 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICALS
23 through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order
24 compelling DEFENDANTS to bring their business practices into compliance with Proposition
25

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

1 65 by providing a clear and reasonable warning to each individual who has been and who in
2 the future may be exposed to the LISTED CHEMICALS from the use of the PRODUCTS.
3 PLAINTIFF also seeks an order compelling DEFENDANTS to identify and locate each
4 individual person who in the past has purchased the PRODUCTS, and to provide to each such
5 purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures
6 to the LISTED CHEMICALS.

7 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
8 penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by
9 Proposition 65 to remedy DEFENDANTS' failure to provide clear and reasonable warnings
10 regarding exposures to the LISTED CHEMICALS.

11 **JURISDICTION AND VENUE**

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

16 8. This Court has jurisdiction over DEFENDANTS because, based on information
17 and belief, DEFENDANTS are businesses having sufficient minimum contacts with California,
18 or otherwise intentionally availing themselves of the California market through the distribution
19 and sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over
20 them by the California courts consistent with traditional notions of fair play and substantial
21 justice.

22 9. Venue in this action is proper in the Alameda Superior Court because the
23 DEFENDANTS have violated or threaten to violate California law in the County of Alameda.

24 10. On February 19, 2016, October 31, 2017, November 3, 2017, November 9, 2017,
25 and November 10, 2017, PLAINTIFF sent 60-Day Notices of Proposition 65 Violations to the
26 requisite public enforcement agencies, and to DEFENDANTS. The NOTICES were issued

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

- 9 a. DEFENDANTS were provided a copy of the NOTICES by Certified Mail.
- 10 b. DEFENDANTS were provided a copy of a document entitled "The Safe
11 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
12 Summary," which is also known as Appendix A to Title 27 of CCR §25903.
- 13 c. The California Attorney General was provided a copy of the NOTICES via
14 online submission.
- 15 d. The California Attorney General was provided with a Certificate of Merit
16 for each of the NOTICES by the attorney for the noticing parties, stating
17 that there is a reasonable and meritorious case for this action, and attaching
18 factual information sufficient to establish a basis for the certificate,
19 including the identity of the persons consulted with and relied on by the
20 certifier, and the facts, studies, or other data reviewed by those persons,
21 pursuant to H&S Code §25249.7(h) (2).
- 22 e. The district attorneys, city attorneys or prosecutors of each jurisdiction
23 within which the PRODUCTS are offered for sale within California were
24 provided with a copy of the NOTICES pursuant to H&S Code §
25 25249.7(d)(1).

26 11. At least 60-days have elapsed since PLAINTIFF sent the NOTICES to

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

4 **PARTIES**

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

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

11 14. DEFENDANT IOVATE HEALTH SCIENCES U.S.A. INC. is a
12 corporation organized under the State of Delaware's Corporation Law and is a person
13 doing business within the meaning of H&S Code §25249.11.

14 15. DEFENDANT IOVATE HEALTH SCIENCES INTERNATIONAL INC.
15 is a Canadian corporation and is a person doing business within the meaning of H&S
16 Code §25249.11.

17 16. DEFENDANTS have manufactured, packaged, distributed, marketed and /or
18 sold the PRODUCTS for sale or use in California and the County of Alameda. ERC is
19 informed and believes, and thereupon alleges, that DEFENDANTS continue to manufacture,
20 package, distribute, market and/or sell the PRODUCTS for sale or use in California and in
21 Alameda County.

22 **STATUTORY BACKGROUND**

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

26 18. To effect this goal, Proposition 65 requires that individuals be provided with a

1 "clear and reasonable warning" before being exposed to substances listed by the State of
2 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
3 part:

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

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

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

17 **FACTUAL BACKGROUND**

18 21. On February 27, 1987, the State of California officially listed the chemical lead
19 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
20 requirement one year later and was therefore subject to the “clear and reasonable” warning
21 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
22 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
23 level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR
24 § 25805(b).)

25 22. On October 1, 1992, the State of California officially listed the chemicals lead
26 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
subject to the warning requirement one year later and were therefore subject to the “clear and
reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §

1 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
2 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

3 23. On May 1, 1997, the State of California officially listed the chemical cadmium as
4 a chemical known to cause reproductive toxicity. Cadmium became subject to the warning
5 requirement one year later and was therefore subject to the “clear and reasonable” warning
6 requirements of Proposition 65 beginning on May 1, 1998. (27 CCR §25000, *et seq.*; H&S
7 Code §25249.5, *et seq.*). Due to the high toxicity of cadmium, the maximum allowable dose
8 level for cadmium is 4.1 µg/day (micrograms a day) for reproductive toxicity. (27 CCR §
9 25805(b).)

10 24. On October 1, 1987, the State of California officially listed the chemicals
11 cadmium and cadmium compounds as chemicals known to cause cancer. Cadmium and
12 cadmium compounds became subject to the warning requirement one year later and were
13 therefore subject to the “clear and reasonable” warning requirements of Proposition 65
14 beginning on October 1, 1988 (27 CCR §25000, *et seq.*; H&S Code §25249.6 *et seq.*).

15 25. To test DEFENDANTS’ PRODUCTS for lead and/or cadmium, PLAINTIFF
16 hired a well-respected and accredited testing laboratory. The results of testing undertaken by
17 PLAINTIFF of DEFENDANTS’ PRODUCTS show that the PRODUCTS tested were in
18 violation of the 0.5 µg/day for lead and/or the 4.1 µg/day for cadmium “safe harbor” daily dose
19 limits set forth in Proposition 65’s regulations. Very significant is the fact that people are
20 being exposed to lead and/or cadmium through ingestion as opposed to other not as harmful
21 methods of exposure such as dermal exposure. Ingestion of lead and/or cadmium produces
22 much higher exposure levels and health risks than dermal exposure to these chemicals.

23 26. At all times relevant to this action, DEFENDANTS, therefore, have knowingly
24 and intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED
25 CHEMICALS without first giving a clear and reasonable warning to such individuals.

26 27. The PRODUCTS have allegedly been sold by DEFENDANTS for use in

1 California since at least February 19, 2013. The PRODUCTS continue to be distributed
2 and sold in California without the requisite warning information.

3 28. On February 19, 2016, October 31, 2017, November 3, 2017, November 9, 2017,
4 and November 10, 2017, ERC served DEFENDANTS and each of the appropriate public
5 enforcement agencies with Proposition 65 Notices, a document entitled “Notice of Violations
6 of California Health & Safety Code Section 25249.5” that provided DEFENDANTS and the
7 public enforcement agencies with notice that DEFENDANTS were in violation of Proposition
8 65 for failing to warn purchasers and individuals using the PRODUCTS that the use of the
9 PRODUCTS exposes them to lead and/or cadmium, chemicals known to the State of California
10 to cause cancer and/or reproductive toxicity.

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

17 **FIRST CAUSE OF ACTION**

18 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning**
19 **the PRODUCTS described in the February 19, 2016, October 31, 2017, November 3,**
20 **2017, November 9, 2017, and November 10, 2017**
21 **Prop. 65 NOTICES) Against DEFENDANTS**

22 30. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through
23 29, inclusive, as if specifically set forth herein.

24 31. By committing the acts alleged in this Complaint, DEFENDANTS, at all times
25 relevant to this action, and continuing through the present, have violated or threaten to violate
26 H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
individuals who use or handle the PRODUCTS set forth in the NOTICES to the LISTED
CHEMICALS, without first providing a clear and reasonable warning to such individuals

1 pursuant to H&S Code §§ 25249.6 and 25249.11(f).

2 32. By the above-described acts, DEFENDANTS have violated or threaten to violate
3 H&S Code § 25249.6 and are therefore subject to an injunction ordering DEFENDANTS to
4 stop violating Proposition 65, to provide warnings to all present and future customers, and to
5 provide warnings to DEFENDANTS' past customers who purchased or used the PRODUCTS
6 without receiving a clear and reasonable warning.

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

9 34. Continuing commission by DEFENDANTS of the acts alleged above will
10 irreparably harm the citizens of the State of California, for which harm they have no plain,
11 speedy, or adequate remedy at law.

12 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
13 hereafter.

14 **SECOND CAUSE OF ACTION**
15 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
16 **PRODUCTS described in the February 19, 2016, October 31, 2017, November 3, 2017,**
17 **November 9, 2017, and November 10, 2017 PLAINTIFF's NOTICES)**
18 **Against DEFENDANTS**

19 35. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 34,
20 inclusive, as if specifically set forth herein.

21 36. By committing the acts alleged in this Complaint, DEFENDANTS at all times
22 relevant to this action, and continuing through the present, have violated H&S Code §25249.6
23 by, in the course of doing business, knowingly and intentionally exposing individuals who use
24 or handle the PRODUCTS set forth in the NOTICES to the LISTED CHEMICALS, without
25 first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
26 25249.6 and 25249.11(f).

37. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
§25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to

1 the LISTED CHEMICALS from the PRODUCTS.

2 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
3 hereafter.

4 **THE NEED FOR INJUNCTIVE RELIEF**

5 38. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through
6 37, as if set forth below.

7 39. By committing the acts alleged in this Complaint, DEFENDANTS have caused
8 or threaten to cause irreparable harm for which there is no plain, speedy or adequate remedy at
9 law. In the absence of equitable relief, DEFENDANTS will continue to create a substantial
10 risk of irreparable injury by continuing to cause or threatening to cause consumers to be
11 involuntarily and unwittingly exposed to the LISTED CHEMICALS through the use and/or
12 handling of the PRODUCTS.

13 **PRAYER FOR RELIEF**

14 Wherefore, PLAINTIFF accordingly prays for the following relief:

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

20 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling
21 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
22 since February 19, 2013, and to provide a warning to such person that the use of the
23 PRODUCTS will expose the user to chemicals known to birth defects and other reproductive
24 harm;

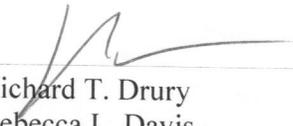
25 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
26 against DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65;

1 D. an award to PLAINTIFF of its reasonable attorney's fees and costs of suit
2 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further
3 application to the Court; and,

4 E. such other and further relief as may be just and proper.
5

6 DATED: 12/22/17

LOZEAU | DRURY LLP

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10 Richard T. Drury
11 Rebecca L. Davis
12 Attorneys for Plaintiff
13 Environmental Research Center, Inc.
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EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Wilmington Trust SP Services, Inc.
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
1105 North Market Street, Suite 1300
Wilmington, DE 19801

CT Corporation System
(Iovate Health Sciences International Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA CERTIFIED MAIL

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA ELECTRONIC MAIL

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

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

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

VIA ELECTRONIC MAIL

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

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

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

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

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

VIA ELECTRONIC MAIL

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

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

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Iovate Health Sciences U.S.A. Inc.
Iovate Health Sciences International Inc.

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. **Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Mixed Berry - Lead**
2. **Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Vanilla - Lead**
3. **Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Chocolate - Lead**
4. **Iovate Health Sciences U.S.A. Inc. Epiq Gainer Milk Chocolate - Lead**
5. **Iovate Health Sciences U.S.A. Inc. Hydroxycut Appetite Control Plus Appethyl Mixed Berry Smoothie - Lead**
6. **Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Caffeine Free - Lead**
7. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Mass Tech Milk Chocolate - Lead**
8. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anabolic Halo Chocolate - Lead**
9. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Fruit Punch - Lead**
10. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Blue Raspberry - Lead**
11. **Iovate Health Sciences U.S.A. Inc. Hydroxycut Lean Protein Chocolate Fudge - Lead**
12. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Gourmet Milk Chocolate - Lead**
13. **Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Vanilla - Lead**
14. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Gourmet Milk Chocolate - Lead**
15. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Vanilla Ice Cream - Lead**
16. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Strawberry Shortcake - Lead**
17. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Vanilla Caramel - Lead**
18. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum Iso-Zero Unflavored - Lead**

- 19. Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Double Dutch Chocolate - Lead**
- 20. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Peanut Butter Chocolate - Lead**
- 21. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 White Chocolate - Lead**
- 22. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Cookies and Cream - Lead**
- 23. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Strawberry - Lead**
- 24. Iovate Health Sciences U.S.A. Inc. Purely Inspired Garcinia Cambogia+ - Lead**
- 25. Iovate Health Sciences U.S.A. Inc. Purely Inspired Raspberry Ketones+ - Lead**
- 26. Iovate Health Sciences U.S.A. Inc. Purely Inspired Garcinia Cambogia+ Cherry Natural Flavors Gummies - Lead**
- 27. Iovate Health Sciences U.S.A. Inc. Purely Inspired Konjac Root+ - Lead**
- 28. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Milk Chocolate - Lead**
- 29. Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum Garcinia+Plus - Lead**
- 30. Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Vanilla Ice Cream - Lead**
- 31. Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Fruit Punch Blast - Lead**
- 32. Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Watermelon - Lead**
- 33. Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Blue Raspberry - Lead**
- 34. Iovate Health Sciences U.S.A. Inc. Xenadrine 7X More Weight Loss Than Dieting Alone - Lead**
- 35. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Pink Lemonade - Lead**
- 36. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Watermelon - Lead**
- 37. Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Creamy Vanilla - Lead**
- 38. Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake French Vanilla - Lead**
- 39. Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake Very Berry- Lead**
- 40. Iovate Health Sciences U.S.A. Inc. MuscleTech GAKIC VO2 Max SX-7 - Lead**
- 41. Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Fruit Punch Fusion - Lead**
- 42. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit Lean Protein Rich Chocolate - Lead**
- 43. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Pre-Workout Explosion Fruit Punch - Lead**
- 44. Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Max! For Women - Lead**

- 45. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Isolate+ Plus Elite Series French Vanilla - Lead**
- 46. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Casein Protein Elite Series Triple Chocolate - Lead**
- 47. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Isolate+ Plus Elite Series Decadent Chocolate - Lead**
- 48. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Triple Chocolate - Lead**
- 49. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Vanilla Cream - Lead**
- 50. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Cookies & Cream - Lead**
- 51. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Instant Protein Smoothie Mixed Berry - Lead**
- 52. Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Cookies & Cream Cake Batter Flavor - Lead**
- 53. Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Rich Vanilla Flavor - Lead**
- 54. Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Chocolate Brownie Flavor - Lead**
- 55. Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Rich Chocolate Flavor - Lead**
- 56. Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Vanilla Caramel Flavor - Lead**
- 57. Iovate Health Sciences U.S.A. Inc. Fuel:One Complex-1 Chocolate Brownie Flavor - Lead**
- 58. Iovate Health Sciences U.S.A. Inc. Fuel:One Micellar Whey Build Chocolate Fudge Flavor - Lead**
- 59. Iovate Health Sciences U.S.A. Inc. Fuel:One Thermo Stack - Lead**
- 60. Iovate Health Sciences U.S.A. Inc. Epiq Isolate Milk Chocolate - Lead**
- 61. Iovate Health Sciences U.S.A. Inc. Epiq Isolate Rich Vanilla - Lead**
- 62. Iovate Health Sciences U.S.A. Inc. Epiq 3x Lean Muscle - 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.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 19, 2013, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their 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 Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences
International Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties 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 Violators 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



Rebecca Davis

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

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

Wilmington Trust SP Services, Inc.
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
1105 North Market Street, Suite 1300
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

CT Corporation System
(Iovate Health Sciences International Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

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

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

February 19, 2016

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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

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

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

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

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

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

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

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

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

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

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on February 19, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

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, 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 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 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 County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne 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

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EXHIBIT B



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

CT Corporation System
(Iovate Health Sciences International Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA CERTIFIED MAIL

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA ELECTRONIC MAIL

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
mлатimer@co.lassen.ca.us

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

VIA ELECTRONIC MAIL

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th
Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

VIA ELECTRONIC MAIL

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

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

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

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Iovate Health Sciences U.S.A. Inc.
Iovate Health Sciences International Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Isolate+ Plus Elite Series Decadent Chocolate - Lead**
- 2. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Vanilla Cream - Lead**
- 3. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Triple Chocolate - Lead**
- 4. Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based Nutritional Shake French Vanilla - Lead**
- 5. Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Brownie - Lead**
- 6. Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Birthday Cake - Lead**
- 7. Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Triple Chocolate – Lead, Cadmium**
- 8. Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Chip Cookie Dough - Lead**
- 9. Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Cookies & Cream - Lead**
- 10. Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Chocolate Peanut Butter - Lead**
- 11. Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Decadent Chocolate - Lead**
- 12. Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Vanilla Ice 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

October 31, 2017

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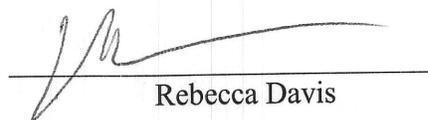
This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since October 31, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)

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

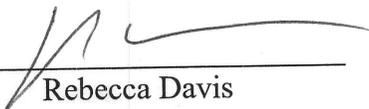
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences
International Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: October 31, 2017



Rebecca Davis

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

CT Corporation System
(Iovate Health Sciences International Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

On October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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

October 31, 2017

Page 7

On October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties 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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

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

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

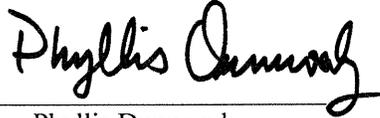
Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

October 31, 2017

Page 8

On October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on October 31, 2017, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a long, sweeping tail on the "y".

Phyllis Dunwoody

Service List

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

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

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

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

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

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

District Attorney, 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
P.O. Drawer D
Independence, CA 93526

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
Hall of Justice
211 West Temple St., Ste 1200
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

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, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92401

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

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 County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne 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. The reader is directed to the statute and OEHHA 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?

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>.

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 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 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 Period. 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

² See Section 25501(a)(4).

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

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 2017

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.

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EXHIBIT C



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

CT Corporation System
(Iovate Health Sciences International Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA CERTIFIED MAIL

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA ELECTRONIC MAIL

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
mлатimer@co.lassen.ca.us

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

VIA ELECTRONIC MAIL

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th
Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

VIA ELECTRONIC MAIL

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

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

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

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Iovate Health Sciences U.S.A. Inc.
Iovate Health Sciences International Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Pure 7-Day Cleanse With Active Probiotics - Lead**
- 2. Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based Nutritional Shake Decadent Chocolate - Lead**
- 3. Iovate Health Sciences U.S.A. Inc. True Grit Test Booster - Lead**
- 4. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Strawberry Smoothie - Lead**
- 5. Iovate Health Sciences U.S.A. Inc. Epiq Quad Test - Lead**
- 6. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit 100% Protein Isolate French Vanilla - Lead**
- 7. Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Raspberry Lemonade - Lead**
- 8. Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Cherry Limeade Twist - Lead**
- 9. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper-Build Extreme Fruit Punch - Lead**
- 10. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Complete Recovery Protein Elite Series Decadent Chocolate – Lead, Cadmium**
- 11. Iovate Health Sciences U.S.A. Inc. MuscleTech Premium 100% Whey Protein+ Plus Deluxe Vanilla - Lead**
- 12. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Chewy & Delicious Protein Elite Series Peanut Butter Chocolate - Lead**
- 13. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Test HD Hardcore Testosterone Booster - Lead**
- 14. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Milk Chocolate - Lead**
- 15. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Cookies and Cream - Lead**
- 16. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Strawberry - Lead**
- 17. Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Vanilla - Lead**
- 18. Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Strawberry - Lead**

- 19. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Café Blended Coffee Whey Protein Shake - Lead**
- 20. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Hazelnut - Lead**
- 21. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost French Vanilla - Lead**
- 22. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Caramel - Lead**
- 23. Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Strawberry Cheesecake - Lead**
- 24. Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Chocolate Chip - Lead**
- 25. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey +Greens Vanilla - Lead**
- 26. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey +Greens Milk Chocolate - Lead**
- 27. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Creamy Vanilla - Lead**
- 28. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Vanilla Bean - 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since November 3, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

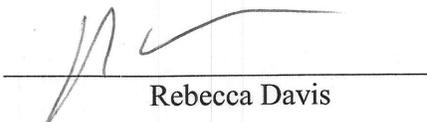
November 3, 2017

Page 5

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)

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

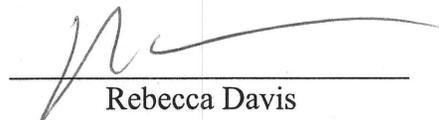
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences
International Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: November 3, 2017



Rebecca Davis

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

CT Corporation System
(Iovate Health Sciences International Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

On November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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

November 3, 2017

Page 8

On November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties 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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

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

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

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

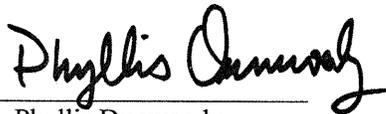
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

November 3, 2017

Page 9

On November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 3, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

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

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

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

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

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

District Attorney, 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
P.O. Drawer D
Independence, CA 93526

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
Hall of Justice
211 West Temple St., Ste 1200
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

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, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92401

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

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 County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne 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. The reader is directed to the statute and OEHHA 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?

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>.

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 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 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 Period. 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

² See Section 25501(a)(4).

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

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 2017

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.

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EXHIBIT D



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

CT Corporation System
(Iovate Health Sciences International Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA CERTIFIED MAIL

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA ELECTRONIC MAIL

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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

VIA ELECTRONIC MAIL

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th
Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

VIA ELECTRONIC MAIL

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

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

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

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Iovate Health Sciences U.S.A. Inc.
Iovate Health Sciences International Inc.**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Peanut Butter - Lead**
- 2. Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Chip Cookie Dough - Lead**
- 3. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Strawberry - Lead**
- 4. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso-Whey Peanut Butter Chocolate Twist - Lead**
- 5. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso-Whey Strawberry Shortcake - Lead**
- 6. Iovate Health Sciences U.S.A. Inc. True Grit Protein Strawberry Cream - Lead**
- 7. Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate French Vanilla - Lead**
- 8. Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate Double Rich Chocolate - Lead**
- 9. Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series PRE Build Sugar Free Gummy Worm - Lead**
- 10. Iovate Health Sciences U.S.A. Inc. True Grit Protein Cookies & Cream - Lead**
- 11. Iovate Health Sciences U.S.A. Inc. True Grit Protein Vanilla Ice Cream - Lead**
- 12. Iovate Health Sciences U.S.A. Inc. Hydroxycut Platinum Weight Loss Plus Probiotics & Vitamins - Lead**
- 13. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped French Vanilla Swirl - Lead**

14. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Fruit Punch - Lead
15. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Icy Rocket Freeze - Lead
16. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Whey Vanilla Cupcake - Lead
17. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Amino Build Next Gen Ripped Peach Mango - Lead
18. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper-Build Blue Raspberry Blast - Lead
19. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Candy Watermelon - Lead
20. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Icy Rocket Freeze - Lead
21. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Strawberry Limeade - Lead
22. Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Sport SX-7 Black Onyx Elite Performance Multivitamin for Women - Lead
23. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Grape - Lead
24. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Double Rich Chocolate - Lead
25. Iovate Health Sciences U.S.A. Inc. MuscleTech Garcinia 4X SX-7 Quad Sourced Stim-Free - Lead
26. Iovate Health Sciences U.S.A. Inc. MuscleTech L-Arginine SX-7 Black Onyx Icy Rocket Freeze - Lead
27. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Fruit Punch Blast - Lead
28. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Icy Rocket Freeze - Lead
29. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Blue Raspberry Fusion - Lead
30. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Blueberry Lemonade - Lead
31. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Peach Mango - Lead
32. Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Cookies & Cream - Lead
33. Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Men - Lead
34. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Cookies and Cream - Lead
35. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Decadent Brownie Cheesecake - Lead
36. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Triple Chocolate Supreme - Lead

- 37. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Cookies and Cream - Lead**
- 38. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum Garcinia Plus Triple Dose Garcinia Formula - Lead**
- 39. Iovate Health Sciences U.S.A. Inc. True Grit Protein Chocolate Milk Shake - Lead**
- 40. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum BCAA 8:1:1 - Lead**
- 41. Iovate Health Sciences U.S.A. Inc. Clear Muscle SX-7 Revolution - Lead**
- 42. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Phase8 Milk Chocolate - Cadmium**

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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since November 9, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

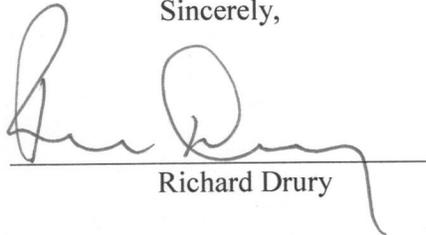
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
November 9, 2017
Page 6

Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

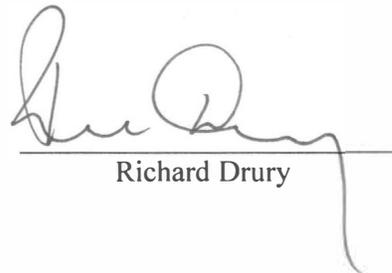
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences
International Inc.**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators 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: November 9, 2017


Richard Drury

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

CT Corporation System
(Iovate Health Sciences International Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

On November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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

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

November 9, 2017

Page 9

On November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties 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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

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

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

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

On November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 9, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

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

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

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

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

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

District Attorney, 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
P.O. Drawer D
Independence, CA 93526

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
Hall of Justice
211 West Temple St., Ste 1200
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

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, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92401

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

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 County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne 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. The reader is directed to the statute and OEHHA 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?

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>.

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 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 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 Period. 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

² See Section 25501(a)(4).

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

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 2017

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.

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EXHIBIT E



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
rebecca@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

CT Corporation System
(Iovate Health Sciences International Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA CERTIFIED MAIL

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

VIA ELECTRONIC MAIL

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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

VIA ELECTRONIC MAIL

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

VIA ELECTRONIC MAIL

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

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

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

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

District Attorneys of Select California
Counties and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Iovate Health Sciences U.S.A. Inc.
Iovate Health Sciences International Inc.

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Nighttime Triple Chocolate Milkshake - Lead**
- 2. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Mocha Cappuccino Swirl - Lead**
- 3. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Cinnamon Swirl - Lead**
- 4. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Toasted S'Mores - Lead**
- 5. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Chocolate Supreme - Lead**
- 6. Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Women - Lead**
- 7. Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Test SX-7 Black Onyx Men's Daily Multivitamin & Vitality Formula - Lead**
- 8. Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Sport SX-7 Black Onyx Elite Performance Multivitamin for Men - Lead**
- 9. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped Chocolate Fudge Brownie - Lead**
- 10. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Vanilla Birthday Cake - Lead**
- 11. Iovate Health Sciences U.S.A. Inc. MuscleTech ProSeries Alpha Test Testosterone Booster Max Strength - Lead**
- 12. Iovate Health Sciences U.S.A. Inc. PureGenix Garcinia Cambogia+ with 60% HCA - 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.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

November 10, 2017

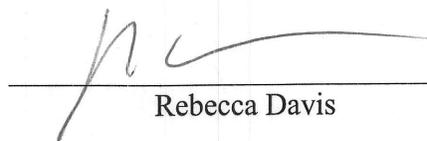
Page 4

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since November 10, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)

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

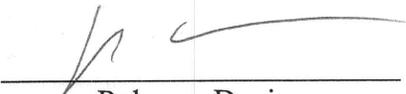
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences
International Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties 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 Violators 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: November 10, 2017



Rebecca Davis

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
1105 North Market Street, Suite 1330
Wilmington, DE 19801

The Corporation Trust Company
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

Current CEO or President
Iovate Health Sciences U.S.A. Inc.
3880 Jeffrey Boulevard
Buffalo, NY 14219

CT Corporation System
(Iovate Health Sciences International Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

Current CEO or President
Iovate Health Sciences International Inc.
381 North Service Road West
Oakville ON L6M 0H4
Canada

CT Corporation System
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
111 Eighth Avenue
New York, NY 10011

CT Corporation System (C0168406)
(Iovate Health Sciences U.S.A. Inc.’s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

On November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties 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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

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

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

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

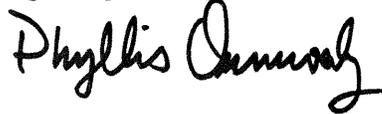
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

November 10, 2017

Page 8

On November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 10, 2017, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a large initial "P".

Phyllis Dunwoody

Service List

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

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

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

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

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

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

District Attorney, 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
P.O. Drawer D
Independence, CA 93526

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
Hall of Justice
211 West Temple St., Ste 1200
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

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, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92401

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

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 County
Post Office Box 519
Red Bluff, CA 96080

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

District Attorney, Tuolumne 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. The reader is directed to the statute and OEHHA 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?

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>.

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 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 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 Period. 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

² See Section 25501(a)(4).

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

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 2017

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.

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EXHIBIT F

Exhibit F
List of Covered Products

	Product Name
1.	Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Mixed Berry
2.	Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Vanilla
3.	Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Chocolate
4.	Iovate Health Sciences U.S.A. Inc. Epiq Gainer Milk Chocolate
5.	Iovate Health Sciences U.S.A. Inc. Hydroxycut Appetite Control Plus Appethyl Mixed Berry Smoothie
6.	Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Caffeine Free
7.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Mass Tech Milk Chocolate
8.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anabolic Halo Chocolate
9.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Fruit Punch
10.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Blue Raspberry
11.	Iovate Health Sciences U.S.A. Inc. Hydroxycut Lean Protein Chocolate Fudge
12.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Gourmet Milk Chocolate
13.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Vanilla
14.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Gourmet Milk Chocolate
15.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Vanilla Ice Cream
16.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Strawberry Shortcake
17.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Vanilla Caramel
18.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum Iso-Zero Unflavored
19.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Double Dutch Chocolate
20.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Peanut Butter Chocolate

Exhibit F
List of Covered Products

	Product Name
21.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 White Chocolate
22.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Cookies and Cream
23.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Strawberry
24.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Raspberry Ketones+
25.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Konjac Root+
26.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Milk Chocolate
27.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Vanilla Ice Cream
28.	Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Fruit Punch Blast
29.	Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Watermelon
30.	Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Blue Raspberry
31.	Iovate Health Sciences U.S.A. Inc. Xenadrine 7X More Weight Loss Than Dieting Alone
32.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Pink Lemonade
33.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Watermelon
34.	Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Creamy Vanilla
35.	Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake French Vanilla
36.	Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake Very Berry
37.	Iovate Health Sciences U.S.A. Inc. MuscleTech GAKIC VO2 Max SX-7
38.	Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Fruit Punch Fusion
39.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit Lean Protein Rich Chocolate
40.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Pre-Workout Explosion Fruit Punch
41.	Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Max! For Women
42.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey

Exhibit F
List of Covered Products

	Product Name
	Isolate+ Plus Elite Series French Vanilla
43.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Casein Protein Elite Series Triple Chocolate
44.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Isolate+ Plus Elite Series Decadent Chocolate
45.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Triple Chocolate
46.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Vanilla Cream
47.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Cookies & Cream
48.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Instant Protein Smoothie Mixed Berry
49.	Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Cookies & Cream Cake Batter Flavor
50.	Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Rich Vanilla Flavor
51.	Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Chocolate Brownie Flavor
52.	Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Rich Chocolate Flavor
53.	Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Vanilla Caramel Flavor
54.	Iovate Health Sciences U.S.A. Inc. Fuel:One Complex-1 Chocolate Brownie Flavor
55.	Iovate Health Sciences U.S.A. Inc. Fuel:One Micellar Whey Build Chocolate Fudge Flavor
56.	Iovate Health Sciences U.S.A. Inc. Fuel:One Thermo Stack
57.	Iovate Health Sciences U.S.A. Inc. Epiq Isolate Milk Chocolate
58.	Iovate Health Sciences U.S.A. Inc. Epiq Isolate Rich Vanilla
59.	Iovate Health Sciences U.S.A. Inc. Epiq 3x Lean Muscle
60.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Isolate+ Plus Elite Series Decadent Chocolate
61.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Vanilla Cream
62.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Triple Chocolate

Exhibit F
List of Covered Products

	Product Name
63.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based + Vanilla
64.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Brownie
65.	Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Birthday Cake
66.	Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Triple Chocolate
67.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Chip Cookie Dough
68.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Cookies & Cream
69.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Chocolate Peanut Butter
70.	Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Decadent Chocolate
71.	Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Vanilla Ice Cream
72.	Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Pure 7-Day Cleanse With Active Probiotics
73.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based Nutritional Shake Decadent Chocolate
74.	Iovate Health Sciences U.S.A. Inc. True Grit Test Booster
75.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Strawberry Smoothie
76.	Iovate Health Sciences U.S.A. Inc. Epiq Quad Test
77.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit 100% Protein Isolate French Vanilla
78.	Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Raspberry Lemonade
79.	Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Cherry Limeade Twist
80.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper- Build Extreme Fruit Punch
81.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Complete Recovery Protein Elite Series Decadent Chocolate

Exhibit F
List of Covered Products

	Product Name
82.	Iovate Health Sciences U.S.A. Inc. MuscleTech Premium 100% Whey Protein+ Plus Deluxe Vanilla
83.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Chewy & Delicious Protein Elite Series Peanut Butter Chocolate
84.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Test HD Hardcore Testosterone Booster
85.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Milk Chocolate
86.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Cookies and Cream
87.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Strawberry
88.	Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Vanilla
89.	Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Strawberry
90.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Café Blended Coffee Whey Protein Shake
91.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Hazelnut
92.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost French Vanilla
93.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Caramel
94.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Strawberry Cheesecake
95.	Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Chocolate Chip
96.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey+Greens Vanilla
97.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey +Greens Milk Chocolate
98.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Creamy Vanilla
99.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Vanilla Bean
100.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Peanut Butter
101.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Chip Cookie Dough

Exhibit F
List of Covered Products

	Product Name
102.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Strawberry
103.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso- Whey Peanut Butter Chocolate Twist
104.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso- Whey Strawberry Shortcake
105.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Strawberry Cream
106.	Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate French Vanilla
107.	Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate Double Rich Chocolate
108.	Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series PRE Build Sugar Free Gummy Worm
109.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Cookies & Cream
110.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Vanilla Ice Cream
111.	Iovate Health Sciences U.S.A. Inc. Hydroxycut Platinum Weight Loss Plus Probiotics & Vitamins
112.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped French Vanilla Swirl
113.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Fruit Punch
114.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Icy Rocket Freeze
115.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Whey Vanilla Cupcake
116.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Amino Build Next Gen Ripped Peach Mango
117.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper- Build Blue Raspberry Blast
118.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Candy Watermelon
119.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Icy Rocket Freeze
120.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Strawberry Limeade
121.	Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Sport SX-7 Black Onyx Elite Performance Multivitamin for Women

Exhibit F
List of Covered Products

	Product Name
122.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Grape
123.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Double Rich Chocolate
124.	Iovate Health Sciences U.S.A. Inc. MuscleTech L-Arginine SX-7 Black Onyx Icy Rocket Freeze
125.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Fruit Punch Blast
126.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Icy Rocket Freeze
127.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Blue Raspberry Fusion
128.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Blueberry Lemonade
129.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Peach Mango
130.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Cookies & Cream
131.	Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Men
132.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Cookies and Cream
133.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Decadent Brownie Cheesecake
134.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Triple Chocolate Supreme
135.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Cookies and Cream
136.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Chocolate Milk Shake
137.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum BCAA 8:1:1
138.	Iovate Health Sciences U.S.A. Inc. Clear Muscle SX-7 Revolution
139.	Iovate Health Sciences U.S.A. Inc. MuscleTechPerformanceSeries Phase8 Milk Chocolate
140.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Nighttime Triple Chocolate Milkshake
141.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Mocha Cappuccino Swirl

Exhibit F
List of Covered Products

	Product Name
142.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Cinnamon Swirl
143.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Toasted S'Mores
144.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Chocolate Supreme
145.	Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Women
146.	Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Test SX-7 Black Onyx Men's Daily Multivitamin & Vitality Formula
147.	Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Sport SX-7 Black Onyx Elite Performance Multivitamin for Men
148.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped Chocolate Fudge Brownie
149.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Vanilla Birthday Cake
150.	Iovate Health Sciences U.S.A. Inc. MuscleTech ProSeries Alpha Test Testosterone Booster Max Strength