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9 Attorneys for Plaintiff  
10 ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED  
FILED  
ALAMEDA COUNTY  
OCT 28 2016

CLERK OF THE SUPERIOR COURT  
By Lanette Buffin, Deputy

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 SINGERMAN & BRAUN, LLC dba PRIME  
18 NUTRITION, a Florida limited liability  
19 company,

20 Defendant.

Case No.

*RG*  
16837062

21 COMPLAINT FOR INJUNCTIVE  
22 RELIEF AND CIVIL PENALTIES

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

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

26 **INTRODUCTION**

1. This action seeks to remedy the continuing failure of Defendant SINGERMAN  
& BRAUN, LLC dba PRIME NUTRITION ("PRIME NUTRITION" or "DEFENDANT") to  
warn consumers in California that they are being exposed to lead, a substance known to the  
State of California to cause cancer, birth defects, and other reproductive harm. DEFENDANT  
manufactures, packages, distributes, markets, and/or sells in California certain products  
containing lead (collectively, the "PRODUCTS"):

- 1 • Prime Nutrition LLC Prime Nutrition Performance Series Phytoform
- 2 Kiwi-Strawberry
- 3 • Prime Nutrition LLC Prime Nutrition Performance Series Phytoform
- 4 Peach-Mango
- 5 • Prime Nutrition LLC Prime Nutrition Performance Series Phytoform
- 6 Watermelon
- 7 • Prime Nutrition LLC Prime Nutrition Performance Series Sleep/GH
- 8 Mango
- 9 • Prime Nutrition LLC Prime Nutrition Performance Series Sleep/GH
- 10 Fruit Punch
- 11 • Prime Nutrition LLC Prime Nutrition Female Series Redux
- 12 • Prime Nutrition LLC Platinum Series Intra-MD EAA+ Mountain Dog
- 13 Slaughtermelon
- 14 • Prime Nutrition LLC Platinum Series Intra-MD EAA+ Mountain Dog
- 15 Orange Carnage
- 16 • Prime Nutrition LLC Platinum Series Partition-MD Nutrient
- 17 Partitioning Catalyst

18 2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the  
19 State<sup>1</sup> of California to cause cancer, birth defects, and other reproductive harm.

20 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED  
21 CHEMICAL at levels requiring a “clear and reasonable warning” under California's Safe  
22 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)  
23 §25249.5, *et seq.* (also known as “Proposition 65”). DEFENDANT has failed to provide the  
24 health hazard warnings required by Proposition 65.

25  
26 \_\_\_\_\_  
<sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.



1 and belief, DEFENDANT is a business having sufficient minimum contacts with California, or  
2 otherwise intentionally availing itself of the California market through the distribution and sale  
3 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 9. Venue in this action is proper in the Alameda Superior Court because the  
6 DEFENDANT has violated or threatens to violate California law in the County of Alameda.

7 On August 16, 2016, PLAINTIFF sent a 60-Day Notice of Proposition 65 Violations  
8 (“NOTICE”) to the requisite public enforcement agencies, and to DEFENDANT. The  
9 NOTICE was issued pursuant to, and in compliance with, the requirements of H&S Code  
10 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to  
11 be given to certain public enforcement agencies and to the violators. The NOTICE included,  
12 *inter alia*, the following information: the name, address, and telephone number of the noticing  
13 individuals; the name of the alleged violator; the statute violated; the approximate time period  
14 during which violations occurred; and descriptions of the violations, including the chemical  
15 involved, the routes of toxic exposure, and the specific product or type of product causing the  
16 violations, and was issued as follows:

- 17 a. DEFENDANT was provided a copy of the NOTICE by Certified Mail.
- 18 b. DEFENDANT was provided a copy of a document entitled “The Safe  
19 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
20 Summary,” which is also known as Appendix A to Title 27 of CCR §25903.
- 21 c. The California Attorney General was provided a copy of the NOTICE via  
22 online submission.
- 23 d. The California Attorney General was provided with a Certificate of Merit by  
24 the attorney for the noticing parties, stating that there is a reasonable and  
25 meritorious case for this action, and attaching factual information sufficient  
26 to establish a basis for the certificate, including the identity of the persons

1 consulted with and relied on by the certifier, and the facts, studies, or other  
2 data reviewed by those persons, pursuant to H&S Code §25249.7(h) (2).

3 e. The District Attorneys, city attorneys or prosecutors of each jurisdiction  
4 within which the PRODUCTS are offered for sale within California were  
5 provided with a copy of the NOTICE via Priority mail or electronic service,  
6 pursuant to H&S Code § 25249.7(d)(1).

7 10. At least 60-days have elapsed since PLAINTIFF sent the NOTICE to  
8 DEFENDANT. The appropriate public enforcement agencies have failed to commence and  
9 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
10 DEFENDANT based on the allegations herein.

11 **PARTIES**

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

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

18 13. DEFENDANT SINGERMANN & BRAUN, LLC dba PRIME  
19 NUTRITION is a Florida limited liability company and is a person doing business within  
20 the meaning of H&S Code §25249.11.

21 14. DEFENDANT has manufactured, packaged, distributed, marketed and /or sold  
22 the PRODUCTS for sale or use in California and the County of Alameda. ERC is informed and  
23 believes, and thereupon alleges, that DEFENDANT continues to manufacture, package,  
24 distribute, market and/or sell the PRODUCTS for sale or use in California and in Alameda  
25 County.

26 //

1 **STATUTORY BACKGROUND**

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

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

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

13 17. "‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of,  
14 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No  
15 knowledge that the discharge, release or exposure is unlawful is required." (27 California Code  
16 of Regulations ("CCR") § 25102(n).)

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

22 **FACTUAL BACKGROUND**

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

1 § 25805(b).)

2 20. On October 1, 1992, the State of California officially listed the chemicals lead  
3 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
4 subject to the warning requirement one year later and were therefore subject to the “clear and  
5 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §  
6 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no  
7 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

8 21. To test DEFENDANT’s PRODUCTS for lead, PLAINTIFF hired a well-  
9 respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF  
10 of DEFENDANT’s PRODUCTS show that the PRODUCTS tested were in violation of the 0.5  
11 µg/day for lead “safe harbor” daily dose limits set forth in Proposition 65’s regulations. Very  
12 significant is the fact that people are being exposed to lead through ingestion as opposed to  
13 other not as harmful methods of exposure such as dermal exposure. Ingestion of lead produces  
14 much higher exposure levels and health risks than dermal exposure to this chemical.

15 22. At all times relevant to this action, DEFENDANT, therefore, has knowingly and  
16 intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED  
17 CHEMICAL without first giving a clear and reasonable warning to such individuals.

18 23. The PRODUCTS have allegedly been sold by DEFENDANT for use in  
19 California since at least August 16, 2013. The PRODUCTS continue to be distributed  
20 and sold in California without the requisite warning information.

21 24. On August 16, 2016, ERC served DEFENDANT and each of the appropriate  
22 public enforcement agencies with a Proposition 65 Notice, a document entitled “Notice of  
23 Violations of California Health & Safety Code Section 25249.5” that provided DEFENDANT  
24 and the public enforcement agencies with notice that DEFENDANT was in violation of  
25 Proposition 65 for failing to warn purchasers and individuals using the PRODUCTS that the  
26 use of the PRODUCTS exposes them to lead, a chemical known to the State of California to

1 cause cancer and/or reproductive toxicity (a true and correct copy of the 60-Day NOTICE is  
2 attached hereto as **Exhibit A** and is incorporated by reference).

3 25. As a proximate result of acts by DEFENDANT, as a person in the course of  
4 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout  
5 the State of California, including in the County of Alameda, have been exposed to the LISTED  
6 CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal  
7 exposures include normal and foreseeable users of the PRODUCTS, as well as all other  
8 persons exposed to the PRODUCTS.

9 **FIRST CAUSE OF ACTION**  
10 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**  
11 **the PRODUCTS described in the August 16, 2016 Prop. 65 NOTICE)**

12 27. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through  
13 26, inclusive, as if specifically set forth herein.

14 28. By committing the acts alleged in this Complaint, DEFENDANT, at all times  
15 relevant to this action, and continuing through the present, has violated or threatens to violate  
16 H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
17 individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED  
18 CHEMICAL, without first providing a clear and reasonable warning to such individuals  
19 pursuant to H&S Code §§ 25249.6 and 25249.11(f).

20 29. By the above-described acts, DEFENDANT has violated or threatens to violate  
21 H&S Code § 25249.6 and are therefore subject to an injunction ordering DEFENDANT to stop  
22 violating Proposition 65, to provide warnings to all present and future customers, and to  
23 provide warnings to DEFENDANT's past customers who purchased or used the PRODUCTS  
24 without receiving a clear and reasonable warning.

25 30. An action for injunctive relief under Proposition 65 is specifically authorized by  
26 Health & Safety Code §25249.7(a).

31. Continuing commission by DEFENDANT of the acts alleged above will



1 irreparably harm the citizens of the State of California, for which harm they have no plain,  
2 speedy, or adequate remedy at law.

3 Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth  
4 hereafter.

5 **SECOND CAUSE OF ACTION**  
6 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**  
7 **PRODUCTS described in PLAINTIFF's NOTICE)**

8 32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31,  
9 inclusive, as if specifically set forth herein.

10 33. By committing the acts alleged in this Complaint, DEFENDANT at all times  
11 relevant to this action, and continuing through the present, has violated H&S Code §25249.6  
12 by, in the course of doing business, knowingly and intentionally exposing individuals who use  
13 or handle the PRODUCTS set forth in the NOTICE to the LISTED CHEMICAL, without first  
14 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§  
15 25249.6 and 25249.11(f).

16 34. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code  
17 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to  
18 the LISTED CHEMICAL from the PRODUCTS.

19 Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth  
20 hereafter.

21 **THE NEED FOR INJUNCTIVE RELIEF**

22 35. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through  
23 34, as if set forth below.

24 36. By committing the acts alleged in this Complaint, DEFENDANT has caused or  
25 threatens to cause irreparable harm for which there is no plain, speedy or adequate remedy at  
26 law. In the absence of equitable relief, DEFENDANT will continue to create a substantial risk  
of irreparable injury by continuing to cause or threatening to cause consumers to be

1 involuntarily and unwittingly exposed to the LISTED CHEMICAL through the use and/or  
2 handling of the PRODUCTS.

3 **PRAYER FOR RELIEF**

4 Wherefore, PLAINTIFF accordingly prays for the following relief:

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

10 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling  
11 DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since  
12 August 16, 2013, and to provide a warning to such person that the use of the PRODUCTS will  
13 expose the user to a chemical known to hirth defects and other reproductive harm;

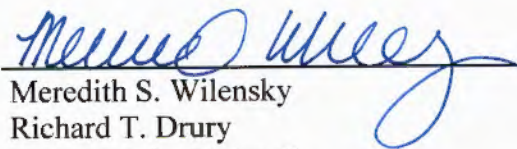
14 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
15 against DEFENDANT in the amount of \$2,500 per day for each violation of Proposition 65;

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

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

20 DATED: 10/28/2016

LOZEAU | DRURY LLP

21  
22   
23 Meredith S. Wilensky  
24 Richard T. Drury  
25 Attorneys for Plaintiff  
26 Environmental Research Center, Inc.

# EXHIBIT A



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  
Singerman & Braun, LLC  
dba Prime Nutrition  
3099 NW 26<sup>th</sup> Avenue  
Boca Raton, FL 33434

Current CEO or President  
Singerman & Braun, LLC  
dba Prime Nutrition  
1090 Holland Drive, Suite 1  
Boca Raton, FL 33487

Current CEO or President  
Singerman & Braun, LLC  
dba Prime Nutrition  
1120 Holland Drive  
Boca Raton, FL 33487

Current CEO or President  
Singerman & Braun, LLC  
dba Prime Nutrition  
21218 St. Andrews Blvd.,  
Suite 230  
Boca Raton, FL 33433

Aaron Singerman  
(Singerman & Braun, LLC  
dba Prime Nutrition's Registered  
Agent for Service of Process)  
1090 Holland Drive, Suite 1  
Boca Raton, FL 33487

**VIA ELECTRONIC MAIL**

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

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220 S. Lassen Street  
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Yen Dang, Supervising Deputy District  
Attorney  
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**VIA ELECTRONIC MAIL**

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Gregory D. Totten, District Attorney  
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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 name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Singerman & Braun, LLC dba Prime Nutrition**

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

1. **Prime Nutrition LLC Prime Nutrition Performance Series Phytoform Kiwi-Strawberry - Lead**
2. **Prime Nutrition LLC Prime Nutrition Performance Series Phytoform Peach-Mango - Lead**
3. **Prime Nutrition LLC Prime Nutrition Performance Series Phytoform Watermelon - Lead**
4. **Prime Nutrition LLC Prime Nutrition Performance Series Sleep/GH Mango - Lead**
5. **Prime Nutrition LLC Prime Nutrition Performance Series Sleep/GH Fruit Punch - Lead**
6. **Prime Nutrition LLC Prime Nutrition Female Series Redux - Lead**
7. **Prime Nutrition LLC Platinum Series Intra-MD EAA+ Mountain Dog Slaughtermelon - Lead**
8. **Prime Nutrition LLC Platinum Series Intra-MD EAA+ Mountain Dog Orange Carnage - Lead**
9. **Prime Nutrition LLC Platinum Series Partition-MD Nutrient Partitioning Catalyst - 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 Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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 each of the Violator.

The Violator has 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 Violator violated Proposition 65 because it 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



August 16, 2016

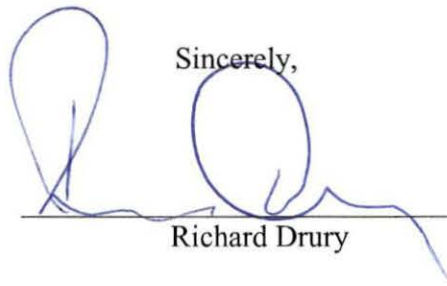
Page 4

violations has occurred on every day since August 16, 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 Violator agrees 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,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Singerman & Braun, LLC dba Prime Nutrition and its Registered Agent for Service of Process only)

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

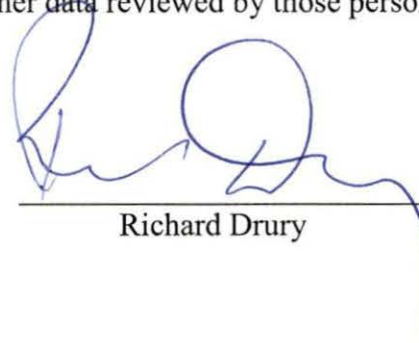
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Singerman & Braun, LLC dba Prime Nutrition**

I, Richard Drury, declare:

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

Dated: August 16, 2016



Richard Drury



**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On August 16, 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  
Singerman & Braun, LLC  
dba Prime Nutrition  
3099 NW 26<sup>th</sup> Avenue  
Boca Raton, FL 33434

Current CEO or President  
Singerman & Braun, LLC  
dba Prime Nutrition  
21218 St. Andrews Blvd.,  
Suite 230  
Boca Raton, FL 33433

Current CEO or President  
Singerman & Braun, LLC  
dba Prime Nutrition  
1090 Holland Drive, Suite 1  
Boca Raton, FL 33487

Aaron Singerman  
(Singerman & Braun, LLC  
dba Prime Nutrition’s Registered  
Agent for Service of Process)  
1090 Holland Drive, Suite 1  
Boca Raton, FL 33487

Current CEO or President  
Singerman & Braun, LLC  
dba Prime Nutrition  
1120 Holland Drive  
Boca Raton, FL 33487

On August 16, 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 August 16, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
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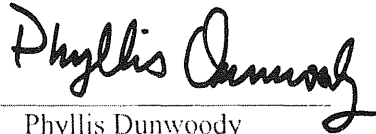
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

August 16, 2016

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On August 16, 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 August 16, 2016, 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  
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Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
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District Attorney, Amador County  
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Jackson, CA 95642

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

District Attorney, Calaveras County  
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San Andreas, CA 95249

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Colusa, CA 95932

District Attorney, Del Norte County  
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Crescent City, CA 95531

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Lakeport, CA 95453

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Los Angeles, CA 90012

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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.<sup>1</sup> 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](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 contaminant<sup>2</sup> 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: August 16, 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: August 16, 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).

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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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> 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>.

<sup>2</sup> 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