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ENDORSED
FILED
ALAMEDA COUNTY

DEC 27 2016

CLERK OF THE SUPERIOR COURT

By _____ Deputy

S. IYAMU

7 Attorneys for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

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

Case No. RG16833858

13 Plaintiff,

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

14 v.

15 ORGAIN, INC., a California Corporation,

Health & Safety Code §25249.5, et seq.

16 Defendant.

17 Case Filed: October 5, 2016

18
19
20 Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("Plaintiff" or "ERC")

21 brings this action in the interests of the general public and hereby alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy the continuing failure of Defendant ORGAIN, INC.
24 ("Defendant" or "ORGAIN") to warn consumers in California that they are being exposed to
25 lead and/or cadmium, substances known to the State of California to cause cancer, birth defects,
26 and other reproductive harm.

27 2. Defendant manufactures, packages, distributes, markets, and/or sells, in California,
28 certain PRODUCTS containing lead and/or cadmium, including each of the following

FILE BY
FAX

1 PRODUCTS:

- 2 1) Orgain Inc. Vegan Nutritional Shake Sweet Vanilla Bean
- 3 2) Orgain Inc. Vegan Nutritional Shake Smooth Chocolate
- 4 3) Orgain Inc. Organic Protein Plant Based Powder Creamy Chocolate Fudge
- 5 4) Orgain Inc. Organic Protein Plant Based Powder Vanilla Bean
- 6 5) Orgain Inc. Organic Meal All-In-One Nutrition Creamy Chocolate Fudge
- 7 6) Orgain Inc. Organic Meal All-In-One Nutrition Vanilla Bean
- 8 7) Orgain Inc. Organic Hydration Orange
- 9 8) Orgain Inc. Organic Hydration Lemon Ice
- 10 9) Orgain Inc. Organic Hydration Coconut
- 11 10) Orgain Inc. Organic Hydration Berry Punch
- 12 11) Orgain Inc. Organic Protein Almond Milk Unsweetened Vanilla
- 13 12) Orgain Inc. Organic Protein Almond Milk Lightly Sweetened Vanilla
- 14 13) Orgain Inc. Grass Fed Protein Nutritional Protein Shake Creamy
- 15 ChocolateFudge
- 16 14) Orgain Inc. Grass Fed Whey Protein Powder Creamy Chocolate Fudge
- 17 15) Orgain Inc. Organic Slim Plant Based Protein Powder Vanilla
- 18 16) Orgain Inc. Organic Slim Plant Based Protein Powder Chocolate
- 19 17) Orgain Inc. Organic Superfoods All-In-One Super Nutrition Berry Flavor
- 20 18) Orgain Inc. Organic Superfoods All-In-One Super Nutrition Original Flavor
- 21 19) Orgain Inc. Organic Protein Nutritional Protein Shake Creamy Chocolate
- 22 Fudge

23 3. Lead and lead compounds and/or cadmium (hereinafter, the “LISTED
24 CHEMICALS”) are substances known to the State¹ of California to cause cancer, birth defects,
25 and other reproductive harm. Proposition 65 requires that consumers must be warned before
26 they are exposed to LISTED CHEMICALS.

27 4. The use and/or handling of the PRODUCTS causes exposures to the LISTED
28

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

1 CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe
2 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)
3 Section 25249.5, *et seq.* (also known and referred to herein as “Proposition 65”).

4 5. Defendant has failed to provide the health hazard warnings required by Proposition
5 65.

6 6. Defendant’s past and continuing manufacturing, packaging, distributing, marketing,
7 and/or sales of the PRODUCTS, without the required health hazard warnings, causes
8 individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS
9 that violate Proposition 65. As a proximate result of these actions, Defendant has violated, and
10 will continue to violate, Proposition 65.

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

23 8. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties in
24 excess of \$11 billion to remedy Defendant’s failure to provide clear and reasonable warnings
25 regarding exposures to the LISTED CHEMICALS.

26 **JURISDICTION AND VENUE**

27 9. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes

1 except those given by statute to other trial courts.” The statute under which this action is
2 brought does not specify any other basis for jurisdiction.

3 10. This Court has jurisdiction over Defendant because, based on information and belief,
4 Defendant is a business having sufficient minimum contacts with California, or otherwise
5 intentionally availing itself of the California market through the distribution and sale of the
6 PRODUCTS in the State of California, to render the exercise of jurisdiction over Defendant by
7 the California courts permissible under traditional notions of fair play and substantial justice.

8 11. Venue in this action is proper in this Court because the Defendant has violated
9 California law in the County of Alameda.

10 **PARTIES**

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

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

16 14. Defendant ORGAIN is a corporation organized under the laws of the State of
17 California and is a person doing business within the meaning of H&S Code Section 25249.11.
18 Defendant manufactures, packages, distributes, markets, and/or sells the PRODUCTS for sale
19 or use in California and in Alameda County.

20 **STATUTORY BACKGROUND**

21 15. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
22 passed as “Proposition 65” by a vote of the People of the State of California in 1986. In passing
23 Proposition 65, the People declared in their right “[t]o be informed about exposures to
24 chemicals that cause cancer, birth defects, or other reproductive harm.” Section 1(b) of Initiative
25 Measure, Proposition 65.

26 16. To effect this goal, Proposition 65 requires that individuals be provided with a “clear
27 and reasonable warning” before being exposed to substances listed by the State of California as
28 causing cancer or reproductive toxicity. H&S Code Section 25249.6 states, in pertinent part:

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

4 17. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of, or
5 exposure to a chemical listed pursuant to H&S Code Section 25249.8(a) of the Act is occurring.
6 No knowledge that the discharge, release, or exposure is unlawful is required.” 27 California
7 Code of Regulations (“CCR”) §25102(n).

8 18. Proposition 65 establishes a procedure by which the Governor lists chemical known
9 to the state to cause cancer or reproductive toxicity. H&S Code § 25249.8. The warning
10 requirements under Proposition 65 for a given chemical go into effect one year after the
11 Governor places that chemical on the list. H&S Code § 25249.10(b).

12 19. Proposition 65 provides that any person “violating or threatening to violate” the
13 warning requirements of the statute may be enjoined in a court of competent jurisdiction. H&S
14 Code § 25249.7. The phrase “threatening to violate” is defined to mean creating “a condition in
15 which there is a substantial likelihood that a violation will occur.” H&S Code § 25249.11(e).

16 20. Violators are liable for civil penalties of up to \$2,500 per day for each violation of
17 the Act. H&S Code § 25249.7.

18 **FACTUAL BACKGROUND**

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

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

1 § 25102, *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. 27 CCR § 25705(b)(1).

3 23. On May 1, 1997, the State of California officially listed the chemical cadmium as a
4 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 Code
7 §25249.5, *et seq.*). Due to the high toxicity of cadmium, the maximum allowable dose level for
8 cadmium is 4.10 µg/day (micrograms a day) for reproductive toxicity. (27 CCR § 25805(b).)

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

14 25. The PRODUCTS have been sold by Defendant for use in California since at least
15 October 16, 2012.

16 26. To test Defendant’s PRODUCTS for lead and/or cadmium, Plaintiff hired a well-
17 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of
18 Defendant’s PRODUCTS show that the PRODUCTS were in violation of the 0.5 µg/day "safe
19 harbor" daily dose limits for lead and/or 4.10µg/day "safe harbor" daily dose limits for cadmium
20 set forth in Proposition 65's regulations. Very significant is the fact that people are being exposed
21 to lead and/or cadmium through ingestion as opposed to other, less harmful, methods of exposure
22 such as dermal exposure. Ingestion of lead and lead compounds and/or cadmium produces much
23 higher exposure levels and health risks than does dermal exposure to these chemicals.

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

27 28. On October 16, 2015 and October 14, 2016, Plaintiff served Defendant and each of
28 the appropriate public enforcement agencies with 60-Day notices of Proposition 65 violations

1 documents entitled “Notice of Violations of California Health & Safety Code §25249.5
2 (“Notices”). True and correct copies of the Notices are attached hereto as Exhibits A and B
3 respectively and each is incorporated herein by reference. The Notices were issued pursuant to,
4 and in compliance with, the requirements of H&S Code Section 25249.7(d) and the statute's
5 implementing regulations regarding the notice of the violations to be given to certain public
6 enforcement agencies and to the violator. The Notices included, *inter alia*, the following
7 information: the name, address, and telephone number of the noticing individual; the name of
8 the alleged violator; the statute violated; the approximate time period during which violations
9 occurred; and descriptions of the violations, including the chemicals involved, the routes of
10 toxic exposure, and the specific product or type of product causing the violations, and was
11 issued as follows:

- 12 a. Defendant was provided a copy of the Notices by Certified Mail;
- 13 b. Defendant was provided a copy of a document entitled “The Safe
14 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
15 Summary,” which is also known as Appendix A to Title 27 of CCR
16 Section 25903 with each Notice;
- 17 c. The California Attorney General was provided copies of the Notices via
18 online submission;
- 19 d. The California Attorney General was provided with Certificates of Merit
20 by the attorney for the noticing party, stating that there is a reasonable
21 and meritorious case for this action, and attaching factual information
22 sufficient to establish a basis for the certificate, including the identity of
23 the persons consulted with and relied on by the certifier, and the facts,
24 studies, or other data reviewed by those persons, pursuant to H&S Code
25 Section 25249.7(h) (2); and

26 The District Attorneys, city attorneys or prosecutors of each jurisdiction within
27 which the PRODUCTS are offered for sale within California were provided with
28 copies of the Notices via priority mail or electronic submission pursuant to H&S

1 Code Section 25249.7(d)(1).

2 29. Defendant's sales of the PRODUCTS have resulted in numerous individual
3 exposures to lead and/or cadmium at levels exceeding Proposition 65 thresholds without the
4 warnings required by Proposition 65 since at least October 16, 2012 and October 14, 2013, the
5 three-year periods preceding Plaintiff's October 16, 2015 and October 14, 2016 service of the
6 Notices, respectively.

7 30. These exposures entitle the Court to award civil penalties in the amount of \$2,500 per
8 day for each violation of Proposition 65 for the applicable statutory penalty period, which is one
9 year prior to the date of the Notices of Violation,. CCP § 340; *Consumer Advocacy Group, Inc.*,
10 150 Cal.App.4th at 981.

11 31. The imposition of a civil penalty award will have a deterrent economic effect in that
12 it is likely to deter future conduct in violation of Proposition 65 by the Defendant and the
13 regulated community as a whole.

14 32. The PRODUCTS continue to be distributed and sold in California without the
15 requisite warning information.

16 33. At least 60 days have elapsed since Plaintiff sent the Notices to the Defendant. The
17 appropriate public enforcement agencies have failed to commence and diligently prosecute a
18 cause of action under Proposition 65 against Defendant based on the allegations herein.

19 34. As a proximate result of acts by Defendant, as persons in the course of doing
20 business within the meaning of H&S Code Section 25249.11, individuals throughout the State
21 of California, including in the County of Alameda, have been exposed to the LISTED
22 CHEMICALS without a clear and reasonable warning. The individuals subject to the illegal
23 exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons
24 exposed to the PRODUCTS.

25 **FIRST CAUSE OF ACTION**

26 **(Injunctive Relief for Violations of Health and Safety Code Section 25249.5, et seq.**
27 **Concerning the PRODUCTS Described in the October 16, 2015 and October 14, 2016**
28 **Proposition 65 Notices**
By Plaintiff Against Defendant)

1 35. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully
2 set forth herein.

3 36. By committing the acts alleged in this Complaint, Defendant, at all times relevant to
4 this action and continuing through the present, has violated H&S Code Section 25249.6 by, in
5 the course of doing business, knowingly and intentionally exposing individuals who use or
6 handle the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first
7 providing a clear and reasonable warning to such individuals pursuant to H&S Code
8 Sections 25249.6 and 25249.11(f).

9 37. By the above-described acts, Defendant has violated H&S Code Section 25249.6 and
10 are therefore subject to an injunction ordering Defendant to stop violating Proposition 65, to
11 provide warnings to all present and future customers, and to provide warnings to Defendant's
12 past customers who purchased or used the PRODUCTS without receiving a clear and
13 reasonable warning.

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

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

19 Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

20 **SECOND CAUSE OF ACTION**

21 **(Civil Penalties for Violations of Health and Safety Code Section 25249.5, et seq.**
22 **Concerning the PRODUCTS Described in the October 16, 2015 and October 14, 2016**
23 **Proposition 65 Notices**
24 **By Plaintiff Against Defendant)**

25 40. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully
26 set forth herein.

27 41. By the above-described acts, Defendant is liable, pursuant to H&S Code Section
28 25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to the
LISTED CHEMICALS from the PRODUCTS, in an amount in excess of \$240 million.

1 Wherefore, Plaintiff prays for judgment against Defendant, as set forth hereafter.

2 **THE NEED FOR INJUNCTIVE RELIEF**

3 42. Plaintiff realleges and incorporates by this reference all preceding paragraphs as if
4 set forth below.

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

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff accordingly prays for the following relief:

12 A. A temporary restraining order, preliminary and permanent injunction, pursuant to
13 H&S Code Section 25249.7(a), enjoining Defendant, its agents, employees, assigns and all
14 persons acting in concert or participating with Defendant, from distributing or selling the
15 PRODUCTS in California without first providing a clear and reasonable warning, within the
16 meaning of Proposition 65, that the users and/or handlers of the PRODUCTS are exposed to the
17 LISTED CHEMICALS;

18 B. An injunctive order, pursuant to H&S Code Section 25249.7(a), compelling
19 Defendant to identify and locate each individual who has purchased the PRODUCTS since
20 October 16, 2012, and to provide a warning to each such person that the use of the PRODUCTS
21 will expose the user to chemicals known to cause cancer, birth defects, and other reproductive
22 harm;

23 C. An assessment of civil penalties pursuant to H&S Code Section 25249.7(b),
24 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65, in an
25 amount in excess of \$240 million;

26 D. An award to Plaintiff of its reasonable attorneys' fees and costs of suit pursuant
27 to California Code of Civil Procedure Section 1021.5, as Plaintiff shall specify in further
28 application to the Court; and

1 E. Such other and further relief as may be just and proper.
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3

4 Dated: December 27, 2016

ADAMS BROADWELL JOSEPH & CARDOZO

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8 TANYA A. GULESSERIAN
9 CHRISTINA M. CARO
Attorneys for Plaintiff
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EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
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ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

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THOMAS A. ENSLOW
TANYA A. GULESSERIAN
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ADAM J. REGELE
ELLEN L. WEHR

VIA CERTIFIED MAIL

Andrew Abraham or Current CEO
Orgain, Inc.
Post Office Box 4918
Irvine, CA 92616

Andrew Abraham or Current CEO
Orgain, Inc.
8122 Scholarship
Irvine, CA 92612

Andrew Abraham or Current CEO
Orgain, Inc.
2450 Stanley
Tustin, CA 92782

Andrew Abraham
(Orgain, Inc.'s Registered
Agent for Service of Process)
2450 Stanley
Tustin, CA 92782

VIA ONLINE SUBMISSION

Office of the California Attorney General

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

Dear Addressees:

I represent the 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

VIA ELECTRONIC MAIL

Yolo County District Attorney
301 2nd Street
Woodland, CA 95695
cfepd@yolocounty.org

VIA PRIORITY MAIL

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

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:

Orgain, Inc.

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

- **Orgain Inc. Vegan Nutritional Shake Sweet Vanilla Bean - Lead**
- **Orgain Inc. Vegan Nutritional Shake Smooth Chocolate - Lead**
- **Orgain Inc. Organic Protein Plant Based Powder Creamy Chocolate Fudge - Lead**
- **Orgain Inc. Organic Protein Plant Based Powder Vanilla Bean - Lead**
- **Orgain Inc. Organic Meal All-In-One Nutrition Creamy Chocolate Fudge - Lead**
- **Orgain Inc. Organic Meal All-In-One Nutrition Vanilla Bean - Lead**
- **Orgain Inc. Organic Hydration Orange - Lead**
- **Orgain Inc. Organic Hydration Lemon Ice - Lead**
- **Orgain Inc. Organic Hydration Coconut - Lead**
- **Orgain Inc. Organic Hydration Berry Punch - 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 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

October 16, 2015

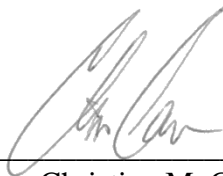
Page 3

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 violations has occurred on every day since October 16, 2012, 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,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Orgain, Inc. and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

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

I, Christina Caro, 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: October 16, 2015



Christina M. Caro

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 October 16, 2015, 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:

Andrew Abraham or
Current CEO
Orgain, Inc.
Post Office Box 4918
Irvine, CA 92616

Andrew Abraham or
Current CEO
Orgain, Inc.
2450 Stanley
Tustin, CA 92782

Andrew Abraham or
Current CEO
Orgain, Inc.
8122 Scholarship
Irvine, CA 92612

Andrew Abraham
(Orgain, Inc.'s Registered
Agent for Service of Process)
2450 Stanley
Tustin, CA 92782

On October 16, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 16, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Yolo County District Attorney
301 2nd Street
Woodland, CA 95695
cfepd@yolocounty.org

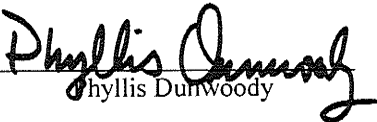
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 16, 2015

Page 6

On October 16, 2015, 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 October 16, 2015, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

October 16, 2015

Page 7

Service List

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

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: October 16, 2015

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: October 16, 2015

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

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
NATALIE B. KUFFEL
LINDA T. SOBCZYNSKI

October 12, 2016

VIA CERTIFIED MAIL

Andrew Abraham or Current CEO
Orgain, Inc.
Post Office Box 4918
Irvine, CA 92616

Andrew Abraham or Current CEO
Orgain, Inc.
8122 Scholarship
Irvine, CA 92612

Andrew Abraham or Current CEO
Orgain, Inc.
16631 Millikan Avenue
Irvine, CA 92606

Andrew Abraham
(Orgain, Inc.'s Registered
Agent for Service of Process)
16631 Millikan Avenue
Irvine, CA 92606

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA ELECTRONIC MAIL

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

VIA ELECTRONIC MAIL

Michelle Latimer, Program Coordinator
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

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Prop65DA@co.monterey.ca.us

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Napa, CA 94559
CEPD@countyofnapa.org

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org

VIA ELECTRONIC MAIL

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DAConsumer.Environmental@sjcda.org

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edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District
Attorney
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San Jose, CA 95110
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney
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jbarnes@sonoma-county.org

VIA ELECTRONIC MAIL

Phillip J. Cline, District Attorney
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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 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 the 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:

Orgain, Inc.

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

- Orgain Inc. Organic Protein Almond Milk Unsweetened Vanilla - Lead**
- Orgain Inc. Organic Protein Almond Milk Lightly Sweetened Vanilla - Lead**
- Orgain Inc. Grass Fed Protein Nutritional Protein Shake Creamy Chocolate Fudge - Lead**
- Orgain Inc. Grass Fed Whey Protein Powder Creamy Chocolate Fudge - Lead**
- Orgain Inc. Organic Slim Plant Based Protein Powder Vanilla - Lead**
- Orgain Inc. Organic Slim Plant Based Protein Powder Chocolate – Lead, Cadmium**
- Orgain Inc. Organic Superfoods All-In-One Super Nutrition Berry Flavor – Lead**
- Orgain Inc. Organic Superfoods All-In-One Super Nutrition Original Flavor - Lead**
- Orgain Inc. Organic Protein Nutritional Protein Shake Creamy Chocolate Fudge - 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 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 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 chemicals, lead and/or cadmium. The consumer exposures that are the subject of this

October 14, 2016

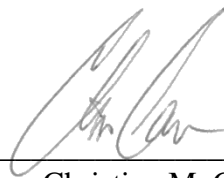
Page 4

notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead and/or cadmium 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 and/or cadmium. 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 and/or cadmium. Each of these ongoing violations has occurred on every day since October 14, 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 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,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Orgain, Inc. and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

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

I, Christina Caro, 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 chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 14, 2016



Christina M. Caro

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 October 14, 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:

Andrew Abraham or Current CEO
Orgain, Inc.
Post Office Box 4918
Irvine, CA 92616

Andrew Abraham or Current CEO
Orgain, Inc.
16631 Millikan Avenue
Irvine, CA 92606

Andrew Abraham or Current CEO
Orgain, Inc.
8122 Scholarship
Irvine, CA 92612

Andrew Abraham
(Orgain, Inc.’s Registered
Agent for Service of Process)
16631 Millikan Avenue
Irvine, CA 92606

On October 14, 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 October 14, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

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

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

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

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

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

On October 14, 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 October 14, 2016, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

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

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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
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 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