

From: Environmental ReseaFax: (866) 234-6280

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ALAMEDA COUNTY

July 09, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:

RG18911970

1 MATTHEW C. MACLEAR (SBN 209228)
2 ANTHONY M. BARNES (SBN 199048)
3 AQUA TERRA AERIS LAW GROUP
4 490 43rd Street
5 Suite 108
6 Oakland, CA 94609
7 Email: mcm@atalawgroup.com

8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

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

14 Plaintiff,

15 v.

16 NUTRABIO LABS, INC., a New Jersey
17 corporation, and DOES 1 – 25,

18 Defendants.

) Case No.

)

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

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

)

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

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendants NUTRABIO LABS,
23 INC. (“NUTRABIO”) and DOES 1-25 (hereinafter individually referred to as “DEFENDANT”
24 or collectively as “DEFENDANTS”) to warn consumers in California that they are being
25 exposed to lead and cadmium, chemicals known to the State of California to cause cancer, birth
26 defects, and other reproductive harm. According to the Safe Drinking Water and Toxics
27 Enforcement Act of 1986, Health and Safety Code (“H&S Code”) section 25249.5 (also known
28 as and referred to hereinafter as “Proposition 65”), businesses must provide persons with a “clear

1 and reasonable warning” before exposing individuals to chemicals known to the state to cause
2 cancer or reproductive harm. DEFENDANTS manufacture, package, distribute, market, and/or
3 sell in California certain products containing lead and/or cadmium (the “SUBJECT
4 PRODUCTS”):

- 5 • **NutraBio 100% Hydrolyzed Whey Protein Dutch Chocolate - Lead**
- 6 • **NutraBio Naturals Organic Plant Protein Chocolate – Lead, Cadmium**
- 7 • **NutraBio 100% Micellar Casein Dutch Chocolate - Lead**
- 8 • **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Chocolate**
9 **Milkshake - Lead**
- 10 • **NutraBio Naturals Organic Plant Protein Vanilla – Lead, Cadmium**
- 11 • **NutraBio Classic Whey Cold Brew Cappuccino - Lead**
- 12 • **NutraBio Muscle Matrix MRP Women's Formula 40:40:20 Meal**
13 **Replacement Banana Cream - Lead**
- 14 • **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Banana Cream**
15 **- Lead**
- 16 • **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Strawberry**
17 **Smoothie - Lead**
- 18 • **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Vanilla - Lead**
- 19 • **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Chocolate - Lead**
- 20 • **NutraBio Whole-Grain Ground Flaxseed Meal – Cadmium**
- 21 • **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Wild**
22 **Strawberry - Lead**

23 2. Lead and cadmium (hereinafter, the “LISTED CHEMICALS”) are chemicals known
24 to the State of California to cause cancer, birth defects, and other reproductive harm.

25 3. Consumption of the SUBJECT PRODUCTS causes exposures to the LISTED
26 CHEMICALS at levels requiring a “clear and reasonable warning” under Proposition 65.
27 DEFENDANTS exposed consumers to the LISTED CHEMICALS and have failed to provide
28 the health hazard warnings required by Proposition 65.

1 4. DEFENDANTS' continued manufacturing, packaging, distributing, marketing
2 and/or sales of the SUBJECT PRODUCTS without the required health hazard warnings, causes,
3 or threatens to cause, individuals to be involuntarily, unknowingly and unwittingly exposed to
4 levels of the LISTED CHEMICALS that violate Proposition 65.

5 **PARTIES**

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

9 6. ERC is a person within the meaning of H&S Code §25249.11 and brings this
10 enforcement action in the public interest pursuant to H&S Code §25249.7(d). H&S Code §
11 25249.7 (d) specifies that actions to enforce Proposition 65 may be brought by a person in the
12 public interest, provided certain notice requirements and no other public prosecutor is diligently
13 prosecuting an action for the same violation(s).

14 7. NUTRABIO is now, and was at all times relevant herein, a corporation organized
15 under the laws of New Jersey and is doing business within the meaning of H&S Code §25249.11.

16 8. DEFENDANTS own, administer, direct, control and/or operate facilities and/or
17 agents, distributors, sellers, marketers or other retail operations who place their SUBJECT
18 PRODUCTS into the stream of commerce in California (including but not limited to Alameda
19 County) under the brand name NutraBio and other brand names, which contain the LISTED
20 CHEMICALS without first giving clear and reasonable warnings.

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

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

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

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

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

19 **FACTUAL BACKGROUND**

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

25 20. On October 1, 1992, the State of California officially listed lead and lead compounds
26 as chemicals known to cause cancer. Lead and lead compounds became subject to the warning
27 requirement one year later and were therefore subject to the "clear and reasonable" warning
28 requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et seq.*; H&S

1 Code §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for
2 lead is 0.5 µg/day (micrograms a day) for reproductive toxicity and the no significant risk level
3 for carcinogens is 15µg/day (oral).

4 21. On May 1, 1997, the State of California officially listed the chemical cadmium as a
5 chemical known to cause reproductive toxicity. Cadmium became subject to the warning
6 requirement one year later and was therefore subject to the “clear and reasonable” warning
7 requirements of Proposition 65 beginning on May 1, 1998. (27 CCR §25000, *et seq.*; H&S
8 Code §25249.5, *et seq.*). Due to the high toxicity of cadmium, the maximum allowable dose
9 level for cadmium is 4.1 µg/day (micrograms a day) for reproductive toxicity. (27 CCR §
10 25805(b).)

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

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

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

28 25. The SUBJECT PRODUCTS have allegedly been sold by DEFENDANTS for use

1 in California since at least April 6, 2015. The SUBJECT PRODUCTS continue to be distributed
2 and sold in California without the requisite warning information.

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

9 27. On April 6, 2018 and April 27, 2018, ERC served NUTRABIO and each of the
10 appropriate public enforcement agencies with a document entitled “Notice of Violations of
11 California Health & Safety Code Section 25249.5” that provided NUTRABIO and the public
12 enforcement agencies with notice that NUTRABIO was in violation of Proposition 65 for failing
13 to warn purchasers and individuals using the SUBJECT PRODUCTS that the consumption of
14 the SUBJECT PRODUCTS exposes them to lead and/or cadmium, chemicals known to the State
15 of California to cause cancer and/or reproductive toxicity (“Prop. 65 Notices”). True and correct
16 copies of the 60-Day Notices (“NOTICES”) are attached hereto as Exhibits A and B respectively
17 and each is hereby incorporated by reference and is available on the Attorney General’s website
18 located at <http://oag.ca.gov/prop65>.

19 28. The NOTICES were issued pursuant to, and in compliance with, the requirements of
20 H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the
21 violations to be given to certain public enforcement agencies and to the violator. The NOTICES
22 included, *inter alia*, the following information: the name, address, and telephone number of the
23 noticing individual; the name of the alleged violator; the statute violated; the approximate time
24 period during which violations occurred; and descriptions of the violations including the
25 chemicals involved, the routes of toxic exposure, and the specific product or type of product
26 causing the violations.

27 29. NUTRABIO was also provided copies of the document entitled "The Safe Drinking
28 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known

1 as Appendix A to Title 27 of CCR §25903, via Certified Mail.

2 30. The California Attorney General was provided copies of the NOTICES and a
3 Certificate of Merit for each Notice by the attorney for the noticing party, stating that there is a
4 reasonable and meritorious case for this action, and attaching factual information sufficient to
5 establish a basis for the certificate, including the identity of the persons consulted with and relied
6 on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to
7 H&S Code §25249.7(h) (2) via online submission.

8 31. After expiration of the sixty (60) day notice period, the appropriate public enforcement
9 agencies failed to commence and diligently prosecute a cause of action under H&S Code
10 §25249.5, *et seq.* against DEFENDANTS based on the allegations herein.

11 **FIRST CAUSE OF ACTION**

12 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
13 **the SUBJECT PRODUCTS described in the April 6, 2018 and April 27, 2018 Prop. 65**
14 **Notices of Violation) Against DEFENDANTS**

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

17 33. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant
18 to this action, and continuing through the present, have violated, or threaten to violate, H&S Code
19 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals
20 in California to chemicals known to the State of California to cause cancer or reproductive toxicity
21 without first giving clear and reasonable warnings to such persons who consume the SUBJECT
22 PRODUCTS containing the LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and
23 25249.11(f).

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

35. An action for injunctive relief under Proposition 65 is specifically authorized by H&S

1 Code §25249.7(a).

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

5 37. In the absence of preliminary and then permanent injunctive relief, DEFENDANTS
6 will continue to create a substantial risk of irreparable injury by continuing to cause consumers
7 to be involuntarily, unknowingly and unwittingly exposed to the LISTED CHEMICALS through
8 the consumption of the SUBJECT PRODUCTS.

9 **SECOND CAUSE OF ACTION**

10 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**
11 **SUBJECT PRODUCTS described in the April 6, 2018 and April 27, 2018, Prop. 65**
12 **Notices of Violation) Against DEFENDANTS**

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

15 39. By committing the acts alleged in this Complaint, DEFENDANTS at all times
16 relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by,
17 in the course of doing business, knowingly and intentionally exposing individuals in California
18 to chemicals known to the State of California to cause cancer or reproductive toxicity without
19 first giving clear and reasonable warnings to such persons who consume the SUBJECT
20 PRODUCTS containing the LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and
21 25249.11(f).

22 40. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
23 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure
24 to the LISTED CHEMICALS from the SUBJECT PRODUCTS, in an amount in excess of \$1
25 million.

26 **THE NEED FOR INJUNCTIVE RELIEF**

27 41. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through
28 40, as if set forth below.

42. By committing the acts alleged in this Complaint, DEFENDANTS have caused

1 or threaten to cause irreparable harm for which there is no plain, speedy or adequate remedy at
2 law. In the absence of equitable relief, DEFENDANTS will continue to create a substantial risk
3 of irreparable injury by continuing to cause consumers to be involuntarily and unwittingly
4 exposed to the LISTED CHEMICALS through the consumption of the SUBJECT PRODUCTS.

5 **PRAYER FOR RELIEF**

6 Wherefore, PLAINTIFF prays for the following relief:

7 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
8 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
9 participating with DEFENDANTS, from manufacturing, distributing, marketing or selling the
10 SUBJECT PRODUCTS in California without first providing a clear and reasonable warning,
11 within the meaning of Proposition 65, that the consumers of the SUBJECT PRODUCTS are
12 exposed to the LISTED CHEMICALS;

13 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
14 DEFENDANTS to identify and locate each individual who has purchased the SUBJECT
15 PRODUCTS since April 6, 2015, and to provide a warning to such person that the consumption
16 of the SUBJECT PRODUCTS will expose the consumer to chemicals known to cause cancer,
17 birth defects, and other reproductive harm;

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

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

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1 E. Such other and further relief as may be just and proper.
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3 DATED: July 9, 2018

AQUA TERRA AERIS LAW GROUP

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7 Matthew C. Maclear
8 Anthony M. Barnes
9 Attorneys for Plaintiff
10 Environmental Research Center, Inc.
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EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

April 6, 2018

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

NutraBio Labs, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
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Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **NutraBio 100% Hydrolyzed Whey Protein Dutch Chocolate - Lead**
2. **NutraBio Naturals Organic Plant Protein Chocolate – Lead, Cadmium**
3. **NutraBio 100% Micellar Casein Dutch Chocolate - Lead**
4. **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Chocolate Milkshake - Lead**
5. **NutraBio Naturals Organic Plant Protein Vanilla – Lead, Cadmium**
6. **NutraBio Classic Whey Cold Brew Cappuccino - Lead**
7. **NutraBio Muscle Matrix MRP Women's Formula 40:40:20 Meal Replacement Banana Cream - Lead**
8. **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Banana Cream - Lead**
9. **NutraBio Muscle Matrix MRP 40:40:20 Meal Replacement Strawberry Smoothie - Lead**
10. **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Vanilla - Lead**
11. **NutraBio Extreme Mass Advanced Anabolic Mass Gainer Chocolate - Lead**
12. **NutraBio Whole-Grain Ground Flaxseed Meal - 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.

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 6, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, looped initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraBio Labs, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 4

CERTIFICATE OF MERIT

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

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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.

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: April 6, 2018

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 5

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On April 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
NutraBio Labs, Inc.
564 Lincoln Boulevard
Middlesex, NJ 08846

Mark Glazier
(Registered Agent for NutraBio Labs, Inc.)
564 Lincoln Boulevard
Middlesex, NJ 08846

On April 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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



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

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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 6, 2018
Page 7

On April 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on April 6, 2018, 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 final letter.

Phyllis Dunwoody



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

April 6, 2018

Page 8

Service List

- District Attorney, Alameda County
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- District Attorney, Mendocino County
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Roseville, CA 95678
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San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for

² See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

April 27, 2018

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

NutraBio Labs, Inc.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
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Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in this product identified as exceeding allowable levels are:

NutraBio Extreme Mass Advanced Anabolic Mass Gainer Wild Strawberry - Lead

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 27, 2015, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
Page 3

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized "M" at the beginning.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to NutraBio Labs, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
Page 4

CERTIFICATE OF MERIT

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

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

A handwritten signature in cursive script that reads "Matthew Maclear".

Dated: April 27, 2018

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
April 27, 2018
Page 5

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On April 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
NutraBio Labs, Inc.
564 Lincoln Boulevard
Middlesex, NJ 08846

Mark Glazier
(Registered Agent for NutraBio Labs, Inc.)
564 Lincoln Boulevard
Middlesex, NJ 08846

On April 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Michelle Latimer, Program Coordinator
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Susanville, CA 96130
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Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 6

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Kathryn L. Turner, Chief Deputy City Attorney
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Phillip J. Cline, District Attorney
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Gregory D. Totten, District Attorney
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Page 7

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

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Executed on April 27, 2018, 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 final letter.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
 April 27, 2018
 Page 8

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	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, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	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, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for

² See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.