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8 ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED  
FILED

JUL 18 2013

MARGARET J. DOWNIE

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 NUTRI-DYN MIDWEST, INC., a Minnesota  
17 corporation,

18 Defendant.  
19  
20

CASE NO. **RG18913357**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

BY FAX

21  
22 Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("Plaintiff" or "ERC")  
23 brings this action in the interests of the general public and hereby alleges:

24 **INTRODUCTION**

25 1. This action seeks to remedy the continuing failure of Defendant NUTRI-DYN  
26 MIDWEST, INC. ("NUTRI-DYN" or "DEFENDANT") to warn consumers in California that  
27 they are being exposed to lead, a substance known to the State of California to cause cancer,  
28 birth defects, and other reproductive harm.

1           2. DEFENDANT manufactures, packages, distributes, markets, and/or sells, in  
2 California, certain products containing lead, including each of the following products  
3 (“PRODUCTS”): (1) DNA Dynamic Nutritional Associates Inc. Muconell, (2) D+ Dynamic  
4 Paleo Protein Pure Beef Protein Isolate Chocolate, (3) D+ Dynamic Paleo Protein Pure Beef  
5 Protein Isolate French Vanilla, (4) D+ Dynamic Intestinal Cleanse Orange, (5) NutriDyn  
6 Ultimate Fat Burner, (6) NutriDyn Fruits & Greens Berry, (7) NutriDyn Fruits & Greens Green  
7 Tea Melon, (8) NutriDyn Fruits & Greens Pink Lemonade, (9) NutriDyn Fruits & Greens  
8 Strawberry Kiwi, (10) NutriDyn Fruits & Greens Chocolate, (11) Dynamic Fruits & Greens  
9 Mint, (12) Dynamic Fruits & Greens Grape, (13) Dynamic Fruits & Greens Espresso, (14)  
10 Dynamic Fruits & Greens Chocolate Peppermint, (15) D+ Dynamic Health Drink Strawberry  
11 Cream, (16) D+ Dynamic Health Drink Chocolate, (17) D+ Dynamic Slender Drink Strawberry  
12 Kiwi, (18) D+ Dynamic Slender Drink Pink Lemonade, (19) D+ Dynamic Recharge Drink  
13 Lemon Lime, (20) D+ Dynamic Performance Drink Orange Cream, (21) NutriDyn Kids Fruits  
14 & Greens Fruit Punch, and (22) NutriDyn Herbal Eze.

15           3. Lead and lead compounds (hereinafter, the “LISTED CHEMICAL”) are substances  
16 known to the State<sup>1</sup> of California to cause cancer, birth defects, and other reproductive harm.  
17 Proposition 65 requires that consumers must be warned before they are exposed to the LISTED  
18 CHEMICAL.

19           4. The ingestion of the PRODUCTS causes exposures to the LISTED CHEMICAL at  
20 levels requiring a “clear and reasonable warning” under California’s Safe Drinking Water and  
21 Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”) Section 25249.5, *et seq.*  
22 (also known and referred to herein as “Proposition 65”).

23           5. DEFENDANT has failed to provide the health hazard warnings required by  
24 Proposition 65.

25           6. DEFENDANT’s past and continuing manufacturing, packaging, distributing,  
26 marketing, and/or sales of the PRODUCTS, without the required health hazard warnings, causes  
27 or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of the  
28

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

1 LISTED CHEMICAL that violate or threaten to violate Proposition 65. As a proximate result  
2 of these actions, DEFENDANT has violated, is violating, and will continue to violate,  
3 Proposition 65.

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

16 8. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties up to  
17 the maximum civil penalty of \$2,500 per day per exposure authorized by Proposition 65 to  
18 remedy DEFENDANT's failure to provide clear and reasonable warnings regarding exposures  
19 to the LISTED CHEMICAL.

#### 20 JURISDICTION AND VENUE

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

25 10. This Court has jurisdiction over DEFENDANT because, based on information and  
26 belief, DEFENDANT is a business having sufficient minimum contacts with California, or  
27 otherwise intentionally availing itself of the California market through the distribution and sale  
28 of the PRODUCTS in the State of California, to render the exercise of jurisdiction over it by the

1 California courts permissible under traditional notions of fair play and substantial justice.

2 11. Venue in this action is proper in this Court because the DEFENDANT has violated  
3 or threatens to violate California law in the County of Alameda.

4 **PARTIES**

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

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

10 14. DEFENDANT NUTRI-DYN is a corporation organized under the laws of the State  
11 of Minnesota and is a person doing business within the meaning of H&S Code Section  
12 25249.11. DEFENDANT manufactures, packages, distributes, markets, and/or sells the  
13 PRODUCTS for sale or use in California and in Alameda County.

14 **STATUTORY BACKGROUND**

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

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

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

27 17. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of, or  
28 exposure to a chemical listed pursuant to H&S Code Section 25249.8(a) of the Act is occurring.

1 No knowledge that the discharge, release, or exposure is unlawful is required.” 27 California  
2 Code of Regulations (“CCR”) § 25102(n).

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

7 19. Proposition 65 provides that any “person who violates or threatens to violate” the  
8 warning requirements of the statute may be enjoined in a court of competent jurisdiction. H&S  
9 Code § 25249.7. The phrase “threaten to violate” is defined to mean creating “a condition in  
10 which there is a substantial probability that a violation will occur.” H&S Code § 25249.11(e).

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

### 13 FACTUAL BACKGROUND

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

20 22. On October 1, 1992, the State of California officially listed the chemicals lead and  
21 lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject  
22 to the warning requirement one year later and were therefore subject to the “clear and  
23 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. 27 CCR  
24 § 25102, *et seq.*; H&S Code § 25249.6, *et seq.* Due to the carcinogenicity of lead, the no  
25 significant risk level for lead is 15 µg/day. 27 CCR § 25705(b)(1).

26 23. The PRODUCTS have been sold by DEFENDANT for use in California since at least  
27 May 8, 2015.

1           24. To test DEFENDANT's PRODUCTS for lead, Plaintiff hired a well-respected and  
2 accredited testing laboratory. The results of testing undertaken by Plaintiff of DEFENDANT's  
3 PRODUCTS show that the PRODUCTS were in violation of the 0.5 µg/day "safe harbor" daily  
4 dose limits for lead set forth in Proposition 65's regulations. Very significant is the fact that  
5 people are being exposed to lead through ingestion as opposed to other, less harmful, methods of  
6 exposure such as dermal exposure. Ingestion of lead produces much higher exposure levels and  
7 health risks than dermal exposure to this chemical.

8           25. At all times relevant to this action, DEFENDANT, therefore, has knowingly and  
9 intentionally exposed the users of the PRODUCTS to the LISTED CHEMICAL without first  
10 giving a clear and reasonable warning to such individuals.

11           26. On May 8, 2018, Plaintiff served NUTRI-DYN and each of the appropriate public  
12 enforcement agencies with a 60-Day Notice of Proposition 65 violations document entitled  
13 "Notice of Violations of California Health & Safety Code §25249.5 ("Notice"). A true and  
14 correct copy of the Notice is attached hereto as Exhibit A and incorporated by reference. The  
15 Notice was issued pursuant to, and in compliance with, the requirements of H&S Code Section  
16 25249.7(d) and the statute's implementing regulations regarding the notice of the violations to  
17 be given to certain public enforcement agencies and to the violator. The Notice included, *inter*  
18 *alia*, the following information: the name, address, and telephone number of the noticing  
19 individual; the name of the alleged violator; the statute violated; the approximate time period  
20 during which violations occurred; and descriptions of the violations, including the chemical  
21 involved, the routes of toxic exposure, and the specific product or type of product causing the  
22 violations, and was issued as follows:

- 23           a.     NUTRI-DYN was provided a copy of the Notice by Certified Mail;  
24           b.     NUTRI-DYN was provided a copy of a document entitled "The Safe  
25                 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
26                 Summary," which is also known as Appendix A to Title 27 of CCR  
27                 Section 25903;  
28           c.     The California Attorney General was provided a copy of the Notice via

1 online submission; and

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

9 e. The District Attorneys, city attorneys or prosecutors of each jurisdiction  
10 within which the PRODUCTS are offered for sale within California were  
11 provided with a copy of the Notice via first class mail or electronic  
12 submission pursuant to H&S Code Section 25249.7(d)(1).

13 27. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures  
14 without the warnings required by Proposition 65 since at least May 8, 2017, the one-year period  
15 preceding the Notice. These exposures entitle the Court to award civil penalties for the  
16 applicable statutory penalty period, which is one year prior to the date of the Notice of Violation.  
17 CCP § 340; *Consumer Advocacy Group, Inc.*, 150 Cal.App.4th at 981.

18 28. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures  
19 without the warnings required by Proposition 65 since at least May 8, 2015, the three-year period  
20 preceding the Notice that is relevant to Plaintiff's prayer for injunctive relief. H&S Code §  
21 25249.7(a); CCP § 338.

22 29. The imposition of a civil penalty award will have a deterrent economic effect in that  
23 it is likely to deter future conduct in violation of Proposition 65 by NUTRI-DYN and the  
24 regulated community as a whole.

25 30. The PRODUCTS continue to be distributed and sold in California without the  
26 requisite warning information.

27 31. At least 60 days have elapsed since Plaintiff sent the Notice to DEFENDANT. The  
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action under Proposition 65 against DEFENDANT based on the allegations herein.

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

8 **FIRST CAUSE OF ACTION**

9 **(Injunctive Relief for Violations of Health and Safety Code Section 25249.5, *et seq.***  
10 **Concerning the PRODUCTS Described in the May 8, 2018 Proposition 65 Notice**  
11 **By Plaintiff Against NUTRI-DYN)**

12 33. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully  
13 set forth herein.

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

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

25 36. An action for injunctive relief under Proposition 65 is specifically authorized by  
26 H&S Code Section 25249.7(a).

27 37. Continuing commission by DEFENDANT of the acts alleged above will irreparably  
28 harm the citizens of the State of California, for which harm they have no plain, speedy, or



1 adequate remedy at law.

2 Wherefore, Plaintiff prays judgment against DEFENDANT, as set forth hereafter.

3 **SECOND CAUSE OF ACTION**

4 **(Civil Penalties for Violations of Health and Safety Code Section 25249.5, et seq.**  
5 **Concerning the PRODUCTS Described in the May 8, 2018 Proposition 65 Notice**  
6 **By Plaintiff Against NUTRI-DYN)**

7 38. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully  
8 set forth herein.

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

12 Wherefore, Plaintiff prays for judgment against NUTRI-DYN, as set forth hereafter.

13 **THE NEED FOR INJUNCTIVE RELIEF**

14 40. Plaintiff realleges and incorporates by this reference all preceding paragraphs as if  
15 set forth below.

16 41. By committing the acts alleged in this Complaint, DEFENDANT has caused  
17 irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the absence  
18 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury  
19 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED  
20 CHEMICAL through the ingestion of the PRODUCTS.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff accordingly prays for the following relief:

23 A. A temporary restraining order, preliminary injunction and permanent  
24 injunction, pursuant to H&S Code Section 25249.7(a), enjoining DEFENDANT, its  
25 agents, employees, assigns and all persons acting in concert or participating with  
26 DEFENDANT, from distributing or selling the PRODUCTS in California without  
27 first providing a clear and reasonable warning, within the meaning of Proposition 65,  
28 to consumers that the ingestion of the PRODUCTS exposes them to the LISTED  
CHEMICAL;

1 B. An injunctive order, pursuant to H&S Code Section 25249.7(a),  
2 compelling DEFENDANT to identify and locate each individual who has purchased  
3 the PRODUCTS since May 8, 2015 and to provide a warning to each such person  
4 that the use of the PRODUCTS will expose the user to a chemical known to cause  
5 cancer, birth defects, and other reproductive harm;

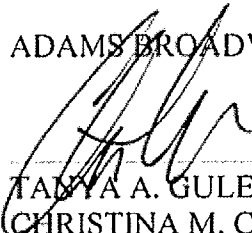
6 C. An assessment of civil penalties pursuant to H&S Code Section  
7 25249.7(b), against DEFENDANT in the amount of \$2,500 per day for each  
8 violation of Proposition 65;

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

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

13  
14 Dated: July 18, 2018

ADAMS BROADWELL JOSEPH & CARDOZO

15  
16   
17 TANYA A. GULESSERIAN  
18 CHRISTINA M. CARO  
19 Attorneys for Plaintiff  
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28

# **EXHIBIT A**

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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May 8, 2018

VIA CERTIFIED MAIL

David Peterson or Current CEO  
Nutri-Dyn Midwest, Inc.  
5414 Highway 12  
Maple Plain, MN 55359

David Peterson or Current CEO  
Nutri-Dyn Midwest, Inc.  
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VIA ONLINE SUBMISSION

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 8, 2018  
Page 2

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**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

I represent 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:

**Nutri-Dyn Midwest, Inc.**

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

1. DNA Dynamic Nutritional Associates Inc. Muconell - Lead
2. D+ Dynamic Paleo Protein Pure Beef Protein Isolate Chocolate - Lead
3. D+ Dynamic Paleo Protein Pure Beef Protein Isolate French Vanilla - Lead
4. D+ Dynamic Intestinal Cleanse Orange - Lead
5. NutriDyn Ultimate Fat Burner - Lead
6. NutriDyn Fruits & Greens Berry - Lead
7. NutriDyn Fruits & Greens Green Tea Melon - Lead
8. NutriDyn Fruits & Greens Pink Lemonade - Lead
9. NutriDyn Fruits & Greens Strawberry Kiwi - Lead
10. NutriDyn Fruits & Greens Chocolate - Lead
11. Dynamic Fruits & Greens Mint - Lead
12. Dynamic Fruits & Greens Grape - Lead
13. Dynamic Fruits & Greens Espresso - Lead
14. Dynamic Fruits & Greens Chocolate Peppermint - Lead
15. D+ Dynamic Health Drink Strawberry Cream - Lead
16. D+ Dynamic Health Drink Chocolate - Lead
17. D+ Dynamic Slender Drink Strawberry Kiwi - Lead
18. D+ Dynamic Slender Drink Pink Lemonade - Lead
19. D+ Dynamic Recharge Drink Lemon Lime - Lead
20. D+ Dynamic Performance Drink Orange Cream - Lead
21. NutriDyn Kids Fruits & Greens Fruit Punch - Lead
22. NutriDyn Herbal Eze - 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 recommended use of these products by consumers. The primary route of exposure to lead has been

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 8, 2018  
Page 4

through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since May 8, 2015, 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,



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Christina M. Caro

Attachments

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

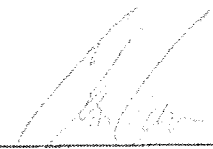
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Nutri-Dyn Midwest, 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: May 8, 2018



Christina M. Caro



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

David Peterson or Current CEO  
Nutri-Dyn Midwest, Inc.  
5414 Highway 12  
Maple Plain, MN 55359

David Peterson or Current CEO  
Nutri-Dyn Midwest, Inc.  
Post Office Box 219  
Maple Plain, MN 55359

On May 8, 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 May 8, 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](mailto:sgrassini@contracostada.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 8, 2018  
Page 7

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

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

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, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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

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

May 8, 2018

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

Executed on May 8, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody". The signature is written in a cursive style with a large, looping initial "P".

---

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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, Ste 102  
El Centro, CA 92243

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

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

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

District Attorney, Orange County  
401 West Civic Center Drive  
Santa Ana, CA 92701

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

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
303 West Third Street  
San Bernardino, CA 92415

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

District Attorney, San Mateo County  
400 County Cir., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downsville, 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 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 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,  
16<sup>th</sup> Floor  
San Jose, CA 95113

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto: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.