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Attorneys for Plaintiff Environmental Research Center, Inc.

FILED BY FAX
 ALAMEDA COUNTY
 July 30, 2018
 CLERK OF
 THE SUPERIOR COURT
 By Lynn Wiley, Deputy
 CASE NUMBER:
RG18914802

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF ALAMEDA**

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

12 **Plaintiff,**

13 vs.

14 **HOTZE HEALTH & WELLNESS CENTER**
 15 **INTERNATIONAL ONE, L.L.C.,**
 16 **individually and doing business as HOTZE**
 17 **VITAMINS; PHYSICIAN'S PREFERENCE**
 18 **INTERNATIONAL, LP, individually and**
 19 **doing business as HOTZE VITAMINS;**
 20 **BRAIDWOOD MANAGEMENT, INC.,**
 21 **individually and doing business as HOTZE**
 22 **VITAMINS; and DOES 1-100**

23 **Defendants.**

CASE NO.

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES

Toxic Tort/Environmental (30)
 Proposition 65, Health & Safety Code
 Section 25249.5 et seq.]

24 Plaintiff Environmental Research Center, Inc. hereby alleges:

25 **I**

26 **INTRODUCTION**

27 1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings
 28 this action as a private attorney general enforcer and in the public interest pursuant to Health &

1 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement
2 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,”
3 mandates that businesses with ten or more employees must provide a “clear and reasonable
4 warning” prior to exposing any individual to a chemical known to the state to cause cancer or
5 reproductive toxicity. Lead is a chemical known to the State of California to cause cancer, birth
6 defects, and other reproductive harm. This complaint seeks injunctive and declaratory relief and
7 civil penalties to remedy the ongoing failure of Defendants Hotze Health & Wellness Center
8 International One, L.L.C., individually and doing business as Hotze Vitamins; Physician’s
9 Preference International, LP, individually and doing business as Hotze Vitamins; Braidwood
10 Management, Inc., individually and doing business as Hotze Vitamins (collectively, “Hotze
11 Vitamins”); and Does 1-100 (hereinafter individually referred to as “Defendant” or collectively
12 as “Defendants”), to warn consumers that they have been exposed to lead from a number of
13 Hotze Vitamins’ nutritional health products as set forth in paragraph 3 at levels exceeding the
14 applicable Maximum Allowable Dose Level (“MADL”) and requiring a warning pursuant to
15 Health & Safety Code section 25249.6.

16 II

17 PARTIES

18 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes,
19 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
20 and toxic chemicals, facilitating a safe environment for consumers and employees, and
21 encouraging corporate responsibility.

22 3. Defendant Hotze Vitamins is a business that develops, manufactures, markets,
23 distributes, and/or sells nutritional health products that have exposed users to lead in the State of
24 California within the relevant statute of limitations period. These “SUBJECT PRODUCTS” (as
25 identified in the Notice of Violation dated May 10, 2018 attached hereto as **Exhibit A**) are: (1)
26 Hotze Vitamins Pure Cleanse Functional Detoxification Powder Natural Berry Flavor; (2)
27 Hotze Vitamins Pure Pea Protein Natural Vanilla Flavor, (3) Hotze Vitamins Pure Pea Protein
28 Natural Chocolate Flavor, (4) Hotze Vitamins Optimal Greens Detoxification and Mental

1 Clarity Lemon-Lime Flavor, (5) Hotze Vitamins Bodyworks Plus by Dr Hotze, (6) Hotze
2 Vitamins Fiber Blend Plus Probiotics, (7) Hotze Vitamins Milk Thistle Extract 150 mg, (8)
3 Hotze Vitamins Dr Hotze's Mocha Protein Bar, (9) My Hotze Pak Detox Starter Pak which
4 includes the following products: a. My Hotze Pak Detox Starter Pak Breakfast, b. My Hotze Pak
5 Detox Starter Pak Lunch, and c. My Hotze Pak Detox Starter Pak Dinner; (10) My Hotze Pak
6 Skinny Pak which includes the following products: a. My Hotze Pak Skinny Pak Breakfast and
7 b. My Hotze Pak Skinny Pak Dinner; (11) Hotze Vitamins Dr. Hotze's Dark Chocolate Coconut
8 Bar, (12) My Hotze Pak 14 Day Detox Kit which includes the following products: a. My Hotze
9 Pak 14 Day Detox Kit Bedtime, b. My Hotze Pak 14 Day Detox Kit Dinner; c. My Hotze Pak
10 14 Day Detox Kit Breakfast, d. My Hotze Pak 14 Day Detox Kit Upon Rising, e. Hotze
11 Vitamins Pure Cleanse Functional Detoxification Powder Natural Berry Flavor, and f. Hotze
12 Vitamins Pure Pea Protein Natural Vanilla Flavor; and (13) Hotze Vitamins Cranberry
13 Concentrate. Hotze Vitamins is a company subject to Proposition 65 as it employs ten or more
14 persons and has employed ten or more persons at all times relevant to this action.

15 4. Defendants Does 1-100, are named herein under fictitious names, as their true names
16 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that
17 each of said Does is responsible, in some actionable manner, for the events and happenings
18 hereinafter referred to, either through said Does' conduct, or through the conduct of its agents,
19 servants or employees, or in some other manner, causing the harms alleged by ERC in this
20 complaint. When said true names and capacities of Does are ascertained, ERC will seek leave
21 to amend this complaint to set forth the same.

22 III

23 JURISDICTION AND VENUE

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

1 10. The warning requirement of Proposition 65 is contained in Health & Safety Code
2 section 25249.6, which provides:

3 No person in the course of doing business shall knowingly and
4 intentionally expose any individual to a chemical known to the state to
5 cause cancer or reproductive toxicity without first giving clear and
6 reasonable warning to such individual, except as provided in Section
7 25249.10.

8 11. Implementing regulations for Proposition 65 define expose as “to cause to ingest, inhale,
9 contact via body surfaces or otherwise come into contact with a listed chemical.” An individual
10 may come into contact with a listed chemical through water, air, food, consumer products and
11 any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27,
12 § 25102, subd. (i).)

13 12. In this case, the exposures are caused by consumer products. Implementing regulations
14 for Proposition 65 define a consumer product exposure as “an exposure which results from a
15 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
16 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
17 Regs., tit. 27, § 25602, subd. (b).)

18 13. Whenever a clear and reasonable warning is required under Health & Safety Code
19 section 25249.6, the “method employed to transmit the warning must be reasonably calculated
20 considering the alternative methods available under the circumstances, to make the warning
21 message available prior to exposure.” (Cal. Code Regs., tit. 27, §25601.) The warning
22 requirement may be satisfied by a warning that appears on a product’s label or other labeling,
23 shelf labeling, signs, a system of signs, public advertising identifying the system and toll-free
24 information services, or any other system, that provides clear and reasonable warnings. (Cal.
25 Code Regs., tit. 27, §25603.1, subd. (a)-(d).)

26 14. Proposition 65 establishes a procedure by which the State is to develop a list of
27 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
28 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after
the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

1 15. Lead was listed as a chemical known to the State of California to cause developmental
2 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
3 listed as a chemical known to the State of California to cause cancer on October 1, 1992. (State
4 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986
5 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for
6 lead as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code
7 Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15
8 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

9 16. Proposition 65 provides that any person "violating or threatening to violate" Proposition
10 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
11 subd. (a).) To "threaten to violate" means "to create a condition in which there is a substantial
12 probability that a violation will occur." (Health & Safety Code, § 25249.11, subd. (e).)
13 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
14 (Health & Safety Code, § 25249.7, subd. (b)(1).)

15 17. Proposition 65 may be enforced by any person in the public interest who provides notice
16 sixty days before filing suit to both the violator and designated law enforcement officials. The
17 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
18 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

19 V

20 **STATEMENT OF FACTS**

21 18. Hotze Vitamins has developed, manufactured, marketed, distributed, and/or sold the
22 SUBJECT PRODUCTS containing lead into the State of California. Consumption of the
23 SUBJECT PRODUCTS according to the directions and/or recommendations provided for said
24 products causes consumers to be exposed to lead at levels exceeding the 0.5 micrograms per day
25 MADL and requiring a warning. Consumers have been ingesting these products for many
26 years, without any knowledge of their exposure to lead, a very dangerous chemical.

27 19. For many years, Hotze Vitamins has knowingly and intentionally exposed numerous
28 persons to lead without providing a Proposition 65 warning. Prior to ERC's Notice of Violation

1 and this Complaint, Hotze Vitamins failed to provide a warning on the labels of the SUBJECT
2 PRODUCTS. Hotze Vitamins has at all times relevant hereto been aware that the SUBJECT
3 PRODUCTS contained lead and that persons using these products have been exposed to this
4 chemical. Hotze Vitamins has been aware of the presence of lead in the SUBJECT
5 PRODUCTS and has failed to disclose the presence of this chemical to the public, who
6 undoubtedly believe they have been ingesting totally healthy and pure products pursuant to the
7 company's statements. On the company's website (<https://www.hotzevitamins.com/our-story>),
8 various representations from Steven F. Hotze, M.D. are conveyed regarding the quality and
9 beneficial nature of its products including but not limited to the following:

10 * "Our goal is to help you achieve health and wellness naturally so that you may
11 enjoy a better quality of life, and these products will help to ensure that."

12 * "All of the products designed for Hotze Vitamins® are formulated at state-of-
13 the-art facilities following strict Good Manufacturing Practices (GMP) guidelines."

14 * "As a medical doctor, I am convinced of the absolute need for vitamin and
15 mineral supplementation, and I can assure you that all of the Hotze Vitamins® nutritional
16 products have been researched and developed with your good health in mind."

17 20. Both prior and subsequent to ERC's Notice of Violation, Hotze Vitamins failed to
18 provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that they
19 have been exposed to a chemical known to the State of California to cause cancer, birth defects
20 and other reproductive harm. This failure to warn is ongoing.

21 **FIRST CAUSE OF ACTION**
22 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**
23 **Reasonable Warning under Proposition 65)**

24 21. ERC refers to paragraphs 1-20, inclusive, and incorporates them herein by this
25 reference.

26 22. By committing the acts alleged above, Hotze Vitamins has, in the course of doing
27 business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead, a
28 chemical known to the State of California to cause cancer, birth defects, and other reproductive

1 harm, without first giving clear and reasonable warning to such individuals within the meaning
2 of Health & Safety Code section 25249.6. In doing so, Hotze Vitamins has violated Health &
3 Safety Code section 25249.6 and continues to violate the statute with each successive sale of the
4 SUBJECT PRODUCTS.

5 23. Said violations render Hotze Vitamins liable for civil penalties, up to \$2,500 per day for
6 each violation, and subject Hotze Vitamins to injunction.

7 **SECOND CAUSE OF ACTION**
8 **(Declaratory Relief)**

9 24. ERC refers to paragraphs 1-23, inclusive, and incorporates them herein by this
10 reference.

11 25. There exists an actual controversy relating to the legal rights and duties of the Parties,
12 within the meaning of Code of Civil Procedure section 1060, between ERC and Hotze
13 Vitamins, concerning whether Hotze Vitamins has exposed individuals to a chemical known to
14 the State of California to cause cancer, birth defects, and other reproductive harm without
15 providing clear and reasonable warning.

16 **VI**

17 **PRAYER**

18 WHEREFORE ERC prays for relief as follows:

19 1. On the First Cause of Action, for civil penalties for each and every violation according
20 to proof;

21 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
22 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive
23 orders, or other orders as are necessary to prevent Hotze Vitamins from exposing persons to
24 lead without providing clear and reasonable warning;

25 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
26 Procedure section 1060 declaring that Hotze Vitamins has exposed individuals to lead without
27 providing clear and reasonable warning; and

28 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil

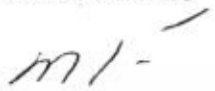
1 Procedure section 1021.5 or the substantial benefit theory;

2 5. For costs of suit herein; and

3 6. For such other relief as the Court may deem just and proper.

4
5 DATED: July 30, 2018

MICHAEL FREUND & ASSOCIATES

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8 _____
9 Michael Freund
10 Ryan Hoffman
11 Attorneys for Plaintiff
12 ENVIRONMENTAL RESEARCH CENTER, INC.
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EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

May 10, 2018

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

Dear Alleged Violators 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Hotze Health & Wellness Center International One, L.L.C., individually and doing business as Hotze Vitamins
Physician's Preference International, LP, individually and doing business as Hotze Vitamins
Braidwood Management, Inc., individually and doing business as Hotze Vitamins

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. Hotze Vitamins Pure Cleanse Functional Detoxification Powder Natural Berry Flavor - Lead
2. Hotze Vitamins Pure Pea Protein Natural Vanilla Flavor - Lead
3. Hotze Vitamins Pure Pea Protein Natural Chocolate Flavor - Lead
4. Hotze Vitamins Optimal Greens Detoxification and Mental Clarity Lemon-Lime Flavor - Lead
5. Hotze Vitamins Bodyworks Plus by Dr Hotze - Lead
6. Hotze Vitamins Fiber Blend Plus Probiotics - Lead
7. Hotze Vitamins Milk Thistle Extract 150 mg - Lead
8. Hotze Vitamins Dr Hotze's Mocha Protein Bar - Lead
9. My Hotze Pak Detox Starter Pak - Lead
 - a. My Hotze Pak Detox Starter Pak Breakfast
 - b. My Hotze Pak Detox Starter Pak Lunch
 - c. My Hotze Pak Detox Starter Pak Dinner

10. **My Hotze Pak Skinny Pak - Lead**
 - a. **My Hotze Pak Skinny Pak Breakfast**
 - b. **My Hotze Pak Skinny Pak Dinner**
11. **Hotze Vitamins Dr. Hotze's Dark Chocolate Coconut Bar - Lead**
12. **My Hotze Pak 14 Day Detox Kit - Lead**
 - a. **My Hotze Pak 14 Day Detox Kit Bedtime**
 - b. **My Hotze Pak 14 Day Detox Kit Dinner**
 - c. **My Hotze Pak 14 Day Detox Kit Breakfast**
 - d. **My Hotze Pak 14 Day Detox Kit Upon Rising**
 - e. **Hotze Vitamins Pure Cleanse Functional Detoxification Powder Natural Berry Flavor**
 - f. **Hotze Vitamins Pure Pea Protein Natural Vanilla Flavor**
13. **Hotze Vitamins Cranberry Concentrate - 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 these products. 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 May 10, 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 and users or until this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products 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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, 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 chemical, as well as an expensive and time-consuming litigation.

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

May 10, 2018

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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,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Hotze Health & Wellness Center International One, L.L.C., individually and doing business as Hotze Vitamins; Physician's Preference International, LP, individually and doing business as Hotze Vitamins; Braidwood Management, Inc., individually and doing business as Hotze Vitamins and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Hotze Health & Wellness Center International One, L.L.C., individually and doing business as Hotze Vitamins; Physician's Preference International, LP, individually and doing business as Hotze Vitamins; and Braidwood Management, Inc., individually and doing business as Hotze Vitamins

I, Michael Freund, declare:

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

2. I am an attorney for the noticing party.

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

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

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



Dated: May 10, 2018

Michael Freund

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 10, 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
Hotze Health & Wellness Center
International One, L.L.C., individually and
doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 215
Katy, TX 77450

Current President or CEO
Hotze Health & Wellness Center
International One, L.L.C., individually and
doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 160
Katy, TX 77450

Current President or CEO
Physician's Preference International, LP,
individually and doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 215
Katy, TX 77450

Current President or CEO
Physician's Preference International, LP,
individually and doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 160
Katy, TX 77450

Current President or CEO
Braidwood Management, Inc., individually
and doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 215
Katy, TX 77450

Current President or CEO
Braidwood Management, Inc., individually
and doing business as Hotze Vitamins
20214 Braidwood Drive, Suite 160
Katy, TX 77450

Steven F. Hotze
(Registered Agent for Hotze Health & Wellness Center
International One, L.L.C., individually and
doing business as Hotze Vitamins)
20214 Braidwood Drive, Suite 215
Katy, TX 77450

Steven F. Hotze
(Registered Agent for Braidwood Management, Inc.,
individually and doing business as Hotze Vitamins)
20214 Braidwood Drive, Suite 215
Katy, TX 77450

Steven F. Hotze, M.D.
(Registered Agent for Physician's Preference
International, LP, individually and doing business
as Hotze Vitamins)
20214 Braidwood Drive, Suite 215
Katy, TX 77450

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

May 10, 2018

Page 6

On May 10, 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 10, 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
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
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Allison Haley, District Attorney
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CEPD@countyofnapa.org

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Riverside, CA 92501
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Prop65@sacda.org

Kathryn L. Turner, Chief Deputy City Attorney
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gregory.alker@sfgov.org

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DAConsumer.Environmental@sjcda.org

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edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
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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

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

May 10, 2018

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Prop65DA@santacruzcounty.us

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jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
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Gregory D. Totten, District Attorney
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daspecialops@ventura.org

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

On May 10, 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 May 10, 2018, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

Service List

District Attorney, Alameda
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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.