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**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 11 2018

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER
Deputy

Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

vs.

15 **HEALTH MATTERS AMERICA, INC.,**
16 **individually and doing business as**
17 **ORGANIC TRADITIONS, a Delaware**
18 **corporation; ADVANTAGE HEALTH**
19 **MATTERS INC., individually and doing**
20 **business as ORGANIC TRADITIONS, a**
21 **Canadian corporation**

Defendants.

Case No.

RG18931680

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

INTRODUCTION

25 1. This action seeks to remedy the continuing failure of Defendants HEALTH
26 MATTERS AMERICA, INC., individually and doing business as ORGANIC TRADITIONS

and ADVANTAGE HEALTH MATTERS INC., individually and doing business as ORGANIC TRADITIONS (hereinafter individually referred to as “DEFENDANT” or collectively as “DEFENDANTS”) to warn consumers in California that they are being exposed to lead and/or cadmium, substances known to the State of California to cause cancer, birth defects, and other reproductive harm. DEFENDANTS manufacture, package, distribute, market, and/or sell in California certain products containing lead and/or cadmium (collectively, the “PRODUCTS”): (1) Organic Traditions Maca For Women With Probiotics (lead), (2) Organic Traditions Maca For Men With Probiotics (lead), (3) Organic Traditions Smooth Movement Probiotic Fiber Blend With Turmeric (lead), (4) Organic Traditions Turmeric Latte With Probiotics And Saffron (lead), (5) Organic Traditions Moringa Leaf Powder (lead), (6) Organic Traditions Chlorella Powder (lead), (7) Organic Traditions Wheat Grass Juice Powder (lead), (8) Organic Traditions Spirulina Powder (lead), (9) Organic Traditions Barley Grass Juice Powder (lead), (10) Organic Traditions Premium Matcha Green Tea (lead), (11) Organic Traditions Macaccino Drink Mix (lead, cadmium), (12) Organic Traditions Maca X-6 Black And Red-Purple (lead), (13) Organic Traditions Probiotic Super Greens With Turmeric (lead), (14) Organic Traditions Triphala Powder (lead), (15) Organic Traditions Ashwagandha Root Powder (lead), (16) Organic Traditions Amla Berry Powder (lead), (17) Organic Traditions Baobab Fruit Powder (lead), (18) Organic Traditions Turmeric Powder (lead), (19) Organic Traditions Cacao Powder (cadmium), and (20) Organic Traditions Golden Flax Seeds (cadmium).

2. Lead and cadmium (hereinafter, the “LISTED CHEMICALS”) are substances known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.

3. The ingestion of the PRODUCTS causes exposures to the LISTED CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)

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

1 §25249.5, *et seq.* (also known as “Proposition 65”). DEFENDANTS have failed to provide the
2 health hazard warnings required by Proposition 65.

3 4. DEFENDANTS’ past sales and continued manufacturing, packaging,
4 distributing, marketing and/or sales of the PRODUCTS without the required health hazard
5 warnings, causes or threatens to cause individuals to be involuntarily and unwittingly exposed
6 to levels of the LISTED CHEMICALS that violate or threaten to violate Proposition 65.

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

19 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
20 penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by
21 Proposition 65 to remedy DEFENDANTS’ failure to provide clear and reasonable warnings
22 regarding exposures to the LISTED CHEMICALS.

23 **JURISDICTION AND VENUE**

24 7. This Court has jurisdiction over this action pursuant to California Constitution
25 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes
26 except those given by statute to other trial courts.” The statute under which this action is

1 brought does not specify any other basis for jurisdiction.

2 8. This Court has jurisdiction over DEFENDANTS because, based on information
3 and belief, DEFENDANTS are businesses having sufficient minimum contacts with California,
4 or otherwise intentionally availing themselves of the California market through the distribution
5 and sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over
6 them by the California courts consistent with traditional notions of fair play and substantial
7 justice.

8 9. Venue in this action is proper in the Alameda Superior Court because the
9 DEFENDANTS have violated or threaten to violate California law in the County of Alameda.

10 10. On September 20, 2018, PLAINTIFF sent a 60-Day Notice of Proposition 65
11 Violations (“NOTICE”) to the requisite public enforcement agencies, and to DEFENDANTS.
12 The NOTICE was issued pursuant to, and in compliance with, the requirements of H&S Code
13 §25249.7(d) and the statute’s implementing regulations regarding the notice of the violations to
14 be given to certain public enforcement agencies and to the violators. The NOTICE included,
15 *inter alia*, the following information: the name, address, and telephone number of the noticing
16 individual; the name of the alleged violators; the statute violated; the approximate time period
17 during which violations occurred; and descriptions of the violations, including the chemicals
18 involved, the route of toxic exposure, and the specific products or type of products causing the
19 violations, and was issued as follows:

20 a. DEFENDANTS were provided a copy of the NOTICE by Certified Mail.

21 b. DEFENDANTS were provided a copy with the NOTICE of a document
22 entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986
23 (Proposition 65): A Summary,” which is also known as Appendix A to Title
24 27 of CCR §25903.

25 c. The California Attorney General was provided a copy of the NOTICE via
26 online submission.

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

8 e. The district attorneys, city attorneys or prosecutors of each jurisdiction
9 within which the PRODUCTS are offered for sale within California were
10 provided with a copy of the NOTICE pursuant to H&S Code §
11 25249.7(d)(1).

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

16 **PARTIES**

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

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

23 14. DEFENDANT HEALTH MATTERS AMERICA, INC., individually and
24 doing business as ORGANIC TRADITIONS, is a corporation organized under
25 Delaware's Corporation Law and is a person in the course of doing business within the
26 meaning of H&S Code §25249.11.

probability that a violation will occur.” (H&S Code §25249.11(e)). Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

FACTUAL BACKGROUND

21. On February 27, 1987, the State of California officially listed the chemical lead as a chemical known to cause reproductive toxicity. Lead became subject to the warning requirement one year later and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25600, *et seq.*; H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR § 25805(b).)

22. On October 1, 1992, the State of California officially listed the chemicals lead and lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject to the warning requirement one year later and were therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR § 25600, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

23. 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. (State of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for cadmium as a chemical known to cause reproductive toxicity is 4.1 micrograms per day. (Cal. Code Regs., tit. 27, §25805, subd. (b).)

24. To test DEFENDANTS’ PRODUCTS for lead and cadmium, PLAINTIFF hired a well-respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF of DEFENDANTS’ PRODUCTS show that the PRODUCTS tested were in

1 violation of the 0.5 µg/day for lead and/or 4.1 µg/day for cadmium “safe harbor” daily dose
2 limits set forth in Proposition 65’s regulations. Very significant is the fact that people are
3 being exposed to lead and/or cadmium through ingestion as opposed to other not as harmful
4 methods of exposure such as dermal exposure.

5 25. At all times relevant to this action, DEFENDANTS, therefore, have knowingly
6 and intentionally exposed the users of the PRODUCTS to the LISTED CHEMICALS without
7 first giving a clear and reasonable warning to such individuals.

8 26. The PRODUCTS have allegedly been sold by DEFENDANTS for use in
9 California since at least September 20, 2015. The PRODUCTS continue to be distributed
10 and sold in California without the requisite warning information.

11 27. On September 20, 2018, ERC served DEFENDANTS and each of the
12 appropriate public enforcement agencies with a Proposition 65 Notice, a document entitled
13 “Notice of Violations of California Health & Safety Code Section 25249.5” that provided
14 DEFENDANTS and the public enforcement agencies with notice that DEFENDANTS were in
15 violation of Proposition 65 for failing to warn purchasers and individuals using the
16 PRODUCTS that ingestion of the PRODUCTS exposes them to lead and/or cadmium,
17 chemicals known to the State of California to cause cancer and/or reproductive toxicity (a true
18 and correct copy of the 60-Day NOTICE is attached hereto as **Exhibit A** and is incorporated
19 by reference).

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

26 ///

FIRST CAUSE OF ACTION

(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the PRODUCTS described in PLAINTIFF's September 20, 2018 Prop. 65 NOTICE) Against DEFENDANTS

29. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as if specifically set forth herein.

30. By committing the acts alleged in this Complaint, DEFENDANTS, at all times relevant to this action, and continuing through the present, have violated or threaten to violate H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who ingest the PRODUCTS set forth in the NOTICE to the LISTED CHEMICALS, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

31. By the above-described acts, DEFENDANTS have violated or threaten to violate H&S Code § 25249.6 and are therefore subject to an injunction ordering DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to DEFENDANTS' past customers who purchased or ingested the PRODUCTS without receiving a clear and reasonable warning.

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

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

Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth hereafter.

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(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the PRODUCTS described in PLAINTIFF's September 20, 2018 Prop. 65 NOTICE) Against DEFENDANTS

35. By committing the acts alleged in this Complaint, DEFENDANTS, at all times relevant to this action and continuing through the present, have violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who ingest the PRODUCTS set forth in the NOTICE to the LISTED CHEMICALS, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth hereafter.

37. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through 36, as if set forth below.

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1 **PRAYER FOR RELIEF**

2 Wherefore, PLAINTIFF accordingly prays for the following relief:

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

8 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
9 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
10 since September 20, 2015, and to provide a warning to such person that the ingestion of the
11 PRODUCTS will expose the user to chemicals known to cause birth defects and other
12 reproductive harm;

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

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

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

20 DATED: December 11, 2018

LOZEAU | DRURY LLP

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23 Michael R. Lozeau
24 Richard T. Drury
25 Attorneys for Plaintiff
26 Environmental Research Center, Inc.

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EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
michael@lozeaudrury.com

VIA CERTIFIED MAIL

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, Ste 2
Buffalo, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
3215 Broadway St.
Cheektowaga, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
125 Galleria Drive #1482
Cheektowaga, NY 14225

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, #19-20
Buffalo, NY 14227

Current President or CEO
Advantage Health Matters Inc.,
individually and doing business
as Organic Traditions
8-250 Shields Court
Markham, ON L3R 9W7
Canada

VIA CERTIFIED MAIL

Current President or CEO
Advantage Health Matters Inc.,
individually and doing business
as Organic Traditions
5787 Steeles Avenue West
North York, ON M9L 2W3
Canada

Corporations and Companies, Inc.
(Registered Agent for Health Matters
America, Inc., individually and doing
business as Organic Traditions)
910 Foulk Road, Ste 201
Wilmington, DE 19803

VIA ELECTRONIC MAIL

Nancy O'Malley, District Attorney
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7677 Oakport Street, Suite 650
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CEPDProp65@acgov.org

Stacey Grassini, Deputy District Attorney
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VIA ELECTRONIC MAIL

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Paul E. Zellerbach, District Attorney
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VIA ELECTRONIC MAIL

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County Government Center Annex, 4th
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Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
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Ventura, CA 93009
daspecialops@ventura.org

VIA ELECTRONIC MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA 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 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 names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Health Matters America, Inc., individually and doing business as Organic Traditions

Advantage Health Matters Inc., individually and doing business as Organic Traditions

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

- 1. Organic Traditions Maca For Women With Probiotics - Lead**
- 2. Organic Traditions Maca For Men With Probiotics - Lead**
- 3. Organic Traditions Smooth Movement Probiotic Fiber Blend With Turmeric - Lead**
- 4. Organic Traditions Turmeric Latte With Probiotics And Saffron - Lead**
- 5. Organic Traditions Moringa Leaf Powder - Lead**
- 6. Organic Traditions Chlorella Powder - Lead**
- 7. Organic Traditions Wheat Grass Juice Powder - Lead**
- 8. Organic Traditions Spirulina Powder - Lead**
- 9. Organic Traditions Barley Grass Juice Powder - Lead**
- 10. Organic Traditions Premium Matcha Green Tea - Lead**

- 11. Organic Traditions Macaccino Drink Mix – Lead, Cadmium**
- 12. Organic Traditions Maca X-6 Black And Red-Purple - Lead**
- 13. Organic Traditions Probiotic Super Greens With Turmeric - Lead**
- 14. Organic Traditions Triphala Powder - Lead**
- 15. Organic Traditions Ashwagandha Root Powder - Lead**
- 16. Organic Traditions Amla Berry Powder - Lead**
- 17. Organic Traditions Baobab Fruit Powder - Lead**
- 18. Organic Traditions Turmeric Powder - Lead**
- 19. Organic Traditions Cacao Powder - Cadmium**
- 20. Organic Traditions Golden Flax Seeds – Cadmium**

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

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators 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 Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they 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 September 20, 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 Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of

September 20, 2018

Page 5

Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,


Michael Lozeau

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Health Matters America, Inc., individually and doing business as Organic Traditions and Advantage Health Matters Inc., individually and doing business as Organic Traditions and their 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 Health Matters America, Inc., individually and doing business as Organic Traditions and Advantage Health Matters Inc., individually and doing business as Organic Traditions

I, Michael Lozeau, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged 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 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 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: September 20, 2018


Michael Lozeau

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 September 20, 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:

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, Ste 2
Buffalo, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
3215 Broadway St.
Cheektowaga, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
125 Galleria Drive #1482
Cheektowaga, NY 14225

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, #19-20
Buffalo, NY 14227

Current President or CEO
Advantage Health Matters Inc., individually
and doing business as Organic Traditions
8-250 Shields Court
Markham, ON L3R 9W7
Canada

Current President or CEO
Advantage Health Matters Inc., individually
and doing business as Organic Traditions
5787 Steeles Avenue W
North York, ON M9L 2W3
Canada

Corporations and Companies, Inc.
(Registered Agent for Health Matters America, Inc.,
individually and doing business as Organic Traditions)
910 Foulk Road, Ste 201
Wilmington, DE 19803

On September 20, 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 September 20, 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:

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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 20, 2018
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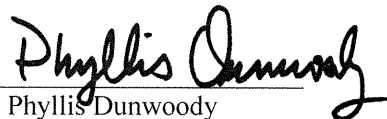
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On September 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached 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 September 20, 2018, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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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?

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

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>.

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 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.

² See Section 25501(a)(4).

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.