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7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED
FILED
ALAMEDA COUNTY

FEB 08 2019

CLERK OF THE SUPERIOR COURT

By CURTIYAH GANTER
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

12 Plaintiff,

13 vs.

14 NATIONAL VITAMIN CO., INC., an
15 Arizona corporation

16 Defendant.

Case No.

RG19006193

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendant NATIONAL
23 VITAMIN CO., INC. ("NATIONAL VITAMIN" or "DEFENDANT") to warn consumers in
24 California that they are being exposed to lead, a substance known to the State of California to
25 cause cancer, birth defects, and other reproductive harm. DEFENDANT manufactures,
26 packages, distributes, markets, and/or sells in California certain products containing lead

(collectively, the "PRODUCTS"):

- Nature's Blend Macuvite Eye Care (lead)
- Nature's Blend Super Theravite-M (lead)
- Nature's Blend Daily Vite Multivitamin (lead)
- Nature's Blend Prenatal Multivitamin with Minerals Softgels (lead)
- Nature's Blend Okinawa Coral Calcium 1000mg (lead)
- Nature's Blend Vitamins for Hair (lead)
- Nature's Blend Prenatal Multivitamin with Minerals Tablets (lead)

2. Lead (hereinafter, the "LISTED CHEMICAL") is a substance known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.

3. The ingestion of the PRODUCTS causes exposure to the LISTED CHEMICAL 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") §25249.5, *et seq.* (also known as "Proposition 65"). DEFENDANT has failed to provide the health hazard warnings required by Proposition 65.

4. DEFENDANT's past and continued manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS without the required health hazard warnings, causes or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICAL that violate or threaten to violate Proposition 65.

5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the continued manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS in California without provision of clear and reasonable warnings regarding the risks of cancer, birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL through the ingestion of the PRODUCTS. PLAINTIFF seeks an injunction compelling

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

1 DEFENDANT to bring its business practices into compliance with Proposition 65 by providing
2 a clear and reasonable warning to each individual who has been and who in the future may be
3 exposed to the LISTED CHEMICAL from the ingestion of the PRODUCTS. PLAINTIFF also
4 seeks an order compelling DEFENDANT to identify and locate each individual person who in
5 the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and
6 reasonable warning that ingestion of the PRODUCTS will cause exposures to the LISTED
7 CHEMICAL.

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

12 **JURISDICTION AND VENUE**

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

17 8. This Court has jurisdiction over DEFENDANT because, based on information
18 and belief, DEFENDANT is a business having sufficient minimum contacts with California, or
19 otherwise intentionally availing itself of the California market through the manufacture,
20 distribution and/or sale of the PRODUCTS in the State of California, to render the exercise of
21 jurisdiction over it by the California courts consistent with traditional notions of fair play and
22 substantial justice.

23 9. Venue in this action is proper in the Alameda Superior Court because the
24 DEFENDANT has violated or threatens to violate California law in the County of Alameda.

25 10. On October 30, 2018, PLAINTIFF sent a 60-Day Notice of Proposition 65
26 Violation ("Notice") to the requisite public enforcement agencies and to NATIONAL

1 VITAMIN. The Notice was issued pursuant to, and in compliance with, the requirements of
2 H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the
3 violations to be given to certain public enforcement agencies and to the violators. The Notice
4 included, *inter alia*, the following information: the name, address, and telephone number of the
5 noticing individuals; the name of the alleged violator; the statute violated; the approximate
6 time period during which violations occurred; and descriptions of the violations, including the
7 chemical involved, the route of exposure, and the specific product or type of product causing
8 the violations, and was issued as follows:

- 9 a. DEFENDANT was provided a copy of the Notice by Certified Mail.
- 10 b. DEFENDANT was provided a copy of a document entitled "The Safe
11 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
12 Summary," which is also known as Appendix A to Title 27 of CCR §25903.
- 13 c. The California Attorney General was provided a copy of the Notice via
14 online submission.
- 15 d. The California Attorney General was provided with a Certificate of Merit by
16 the attorney for the noticing parties, stating that there is a reasonable and
17 meritorious case for this action, and attaching factual information sufficient
18 to establish a basis for the certificate, including the identity of the persons
19 consulted with and relied on by the certifier, and the facts, studies, or other
20 data reviewed by those persons, pursuant to H&S Code §25249.7(h) (2).
- 21 e. The district attorneys, city attorneys or prosecutors of each jurisdiction
22 within which the PRODUCTS are offered for sale within California were
23 provided with a copy of the Notice pursuant to H&S Code § 25249.7(d)(1).

24 11. At least 60 days have elapsed since PLAINTIFF sent the Notice to
25 DEFENDANT. The appropriate public enforcement agencies have failed to commence and
26 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against

1 DEFENDANT based on the allegations herein.

2 **PARTIES**

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

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

9 14. DEFENDANT NATIONAL VITAMIN CO., INC, is a corporation organized
10 under the laws of the State of Arizona and is a person doing business within the meaning
11 of H&S Code §25249.11.

12 15. DEFENDANT has manufactured, packaged, distributed, marketed, and /or sold
13 the PRODUCTS for sale or use in California and the County of Alameda. ERC is informed and
14 believes, and thereupon alleges, that DEFENDANT continues to manufacture, package,
15 distribute, market and/or sell the PRODUCTS for sale or use in California and in Alameda
16 County. DEFENDANT knows and intends that the PRODUCTS are distributed, marketed and
17 sold to consumers in California.

18 **STATUTORY BACKGROUND**

19 16. The People of the State of California have declared in Proposition 65 their right
20 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
21 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

26 No person in the course of doing business shall knowingly and intentionally

1 expose any individual to a chemical known to the state to cause cancer or
2 reproductive toxicity without first giving clear and reasonable warning to such
individual....

3 18. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of,
4 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
5 knowledge that the discharge, release or exposure is unlawful is required." (27 California Code
6 of Regulations ("CCR") § 25102(n).)

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

12 **FACTUAL BACKGROUND**

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

20 21. On October 1, 1992, the State of California officially listed the chemicals lead
21 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
22 subject 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 25000, *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 (micrograms a day). (27 CCR § 25705(b)(1).)

26 22. To test DEFENDANT's PRODUCTS for lead, PLAINTIFF hired a well-

1 respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF
2 of DEFENDANT's PRODUCTS show that the PRODUCTS tested were in violation of the 0.5
3 µg/day "safe harbor" daily dose limit for lead set forth in Proposition 65's regulations.
4 Ingestion of lead produces much higher exposure levels and health risks than dermal exposure
5 to this chemical.

6 23. At all times relevant to this action, DEFENDANT, therefore, has knowingly and
7 intentionally exposed the consumers of the PRODUCTS to the LISTED CHEMICAL without
8 first giving a clear and reasonable warning to such individuals.

9 24. DEFENDANT has sold the PRODUCTS for use in California since at least
10 October 30, 2015. The PRODUCTS continue to be distributed and sold in California
11 without the requisite warning information.

12 25. On October 30, 2018, ERC served DEFENDANT and each of the appropriate
13 public enforcement agencies with a Proposition 65 Notice, a document entitled "Notice of
14 Violations of California Health & Safety Code Section 25249.5" that provided DEFENDANT
15 and the public enforcement agencies with notice that DEFENDANT was in violation of
16 Proposition 65 for failing to warn purchasers and individuals using the PRODUCTS that the
17 ingestion of the PRODUCTS exposes them to lead, a chemical known to the State of California
18 to cause cancer and/or reproductive toxicity (a true and correct copy of the 60-Day Notice is
19 attached hereto as **Exhibit A** and incorporated by reference).

20 26. As a proximate result of acts by DEFENDANT, as a person 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 CHEMICAL without first receiving a clear and reasonable warning. The individuals subject to
24 the illegal exposures include normal and foreseeable consumers of the PRODUCTS, as well as
25 all other 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 the October 30, 2018, Prop. 65 Notice)
Against DEFENDANT

27. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 26, inclusive, as if specifically set forth herein.

28. By committing the acts alleged in this Complaint, DEFENDANT, at all times relevant to this action, and continuing through the present, has violated or threatens 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 CHEMICAL, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

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

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

31. Continuing commission by DEFENDANT 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 DEFENDANT, 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 Notice)
Against DEFENDANT

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

THE NEED FOR INJUNCTIVE RELIEF

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

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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 DEFENDANT, its agents, employees, assigns, and all persons acting in concert or
5 participating with DEFENDANT, 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 consumers of the PRODUCTS are exposed to the LISTED CHEMICAL;

8 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling
9 DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since
10 October 30, 2015, and to provide a warning to such persons that ingestion of the PRODUCTS
11 will expose the consumer to chemicals known to cause birth defects and other reproductive
12 harm;

13 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
14 against DEFENDANT 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: February 8, 2019

LAW OFFICE OF RICHARD M. FRANCO

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22 Richard M. Franco
23 Attorney for Plaintiff
24 Environmental Research Center, Inc.
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EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

6500 ESTATES DRIVE
OAKLAND, CA 94611
510.684.1022
RICK@RFRANCOLAW.COM

VIA CERTIFIED MAIL

Current President or CEO
National Vitamin Co., Inc.
1145 W. Gila Bend Hwy
Casa Grande, AZ 85122

CT Corporation System
(Registered Agent for National
Vitamin Co., Inc.)
3800 N. Central Ave., Ste 460
Phoenix, AZ 85012

Carol Paris
(Registered Agent for National
Vitamin Co., Inc.)
1327 Bullion Circle
San Jose, CA 95120

Joseph Merriss
(Registered Agent for National
Vitamin Co., Inc.)
17755 NW Fieldstone Dr.
Beaverton, OR 97006

VIA ELECTRONIC MAIL

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

VIA ELECTRONIC MAIL

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900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Thomas L. Hardy, District Attorney
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168 North Edwards Street
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Michelle Latimer, Program Coordinator
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220 S. Lassen Street
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mlatimer@co.lassen.ca.us

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1200 Aguajito Road
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Allison Haley, District Attorney
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1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

VIA ELECTRONIC MAIL

Anne Marie Schubert, District Attorney
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901 G Street
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732 Brannan Street
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VIA ELECTRONIC MAIL

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1200 Third Avenue
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jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
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Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
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800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfcpd@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 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:

National Vitamin Co, Inc.

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

- 1. Nature's Blend Macuvite Eye Care - Lead**
- 2. Nature's Blend Super Theravite-M - Lead**
- 3. Nature's Blend Daily Vite Multivitamin - Lead**
- 4. Nature's Blend Prenatal Multivitamin with Minerals Softgels - Lead**
- 5. Nature's Blend Okinawa Coral Calcium 1000 mg - Lead**
- 6. Nature's Blend Vitamins for Hair - Lead**
- 7. Nature's Blend Prenatal Multivitamin with Minerals Tablets - 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.

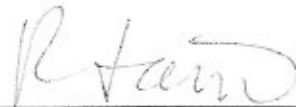
The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The 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. 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 October 30, 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,



Rick Franco

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to National Vitamin Co., Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

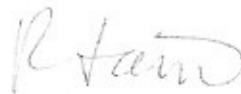
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by National Vitamin Co., Inc.

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 30, 2018



Rick Franco

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 October 30, 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
National Vitamin Co., Inc.
1145 W. Gila Bend Hwy
Casa Grande, AZ 85122

Carol Paris
(Registered Agent for National
Vitamin Co., Inc.)
1327 Bullion Circle
San Jose, CA 95120

CT Corporation System
(Registered Agent for National
Vitamin Co., Inc.)
3800 N. Central Ave., Ste 460
Phoenix, AZ 85012

Joseph Merriss
(Registered Agent for National
Vitamin Co., Inc.)
17755 NW Fieldstone Dr.
Beaverton, OR 97006

On October 30, 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 October 30, 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:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

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

October 30, 2018

Page 7

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

Dije Ndreu, Deputy District Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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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.