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11 ENVIRONMENTAL RESEARCH CENTER, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 ENVIRONMENTAL RESEARCH CENTER,
15 INC., a non-profit California corporation,

16 Plaintiff,

17 v.

18 PREVENTION, LLC, individually and doing
19 business as NATURADE, a Delaware limited
20 liability company,

21 Defendant.

CASE NO.

RG18919704

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

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

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

24 INTRODUCTION

25 1. This action seeks to remedy the continuing failure of Defendant PREVENTION,
26 LLC, individually and doing business as NATURADE ("NATURADE" or "DEFENDANT") to
27 warn consumers in California that they are being exposed to lead and/or cadmium, substances
28 known to the State of California to cause cancer, birth defects, and other reproductive harm.

1 2. DEFENDANT manufactures, packages, distributes, markets, and/or sells, in
2 California, certain products containing lead and/or cadmium, including each of the following
3 products ("PRODUCTS"): (1) Plant Based Vegan Slim High Protein Weight Loss Shake
4 Vanilla (lead), (2) Naturade Total Soy Meal Replacement Strawberry Cream (lead), (3) Vegan
5 Smart All-In-One Nutritional Shake Wild Berries (lead), (4) Vegan Smart Plant Based Pea
6 Protein Vegan Shake Chocolate (lead), (5) Vegan Smart Plant Based Protein & Greens Plus
7 Fruits & Roots Vanilla Crème (lead), (6) Vegan Smart All-In-One Nutritional Shake Vanilla
8 (lead), (7) Vegan Smart All-In-One Nutritional Shake Peaches & Cream (lead), (8) Naturade
9 Vegan Smart All-In-One Nutritional Shake Chocolate (lead, cadmium), (9) Vegan Smart Love
10 is Love All-In-One Nutritional Shake Cookies and Cream (lead, cadmium), (10) Vegan Smart
11 Love is Love All-In-One Nutritional Shake Chocolate Raspberry (lead, cadmium), (11) Vegan
12 Smart BAV All-In-One Nutritional Shake Strawberry Shortcake (lead), (12) Naturade Total Soy
13 Meal Replacement Bavarian Chocolate (lead), and (13) Vegan Slim High Protein Weight Loss
14 Shake Chocolate (lead, cadmium).

15 3. Lead and lead compounds, cadmium and cadmium compounds (hereinafter, the
16 "LISTED CHEMICALS") are substances known to the State¹ of California to cause cancer,
17 birth defects, and other reproductive harm. Proposition 65 requires that consumers must be
18 warned before they are exposed to the LISTED CHEMICALS.

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

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

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

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

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

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

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

20 JURISDICTION AND VENUE

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

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

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

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

4 **PARTIES**

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

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

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

14 **STATUTORY BACKGROUND**

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

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

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

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

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

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

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

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

13 **FACTUAL BACKGROUND**

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

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

26 23. On October 1, 1987, cadmium and cadmium compounds were listed as chemicals
27 known to the State of California to cause cancer. Cadmium and cadmium compounds became
28 subject to the warning requirement one year later and was therefore subject to the “clear and

1 reasonable” warning requirements of Proposition 65 beginning on October 1, 1988.

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

8 25. The PRODUCTS have been sold by DEFENDANT for use in California since at least
9 June 12, 2015.

10 26. To test DEFENDANT’s PRODUCTS for lead and cadmium, Plaintiff hired a well-
11 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of
12 DEFENDANT’s PRODUCTS show that the PRODUCTS were in violation of the 0.5 µg/day
13 “safe harbor” daily dose limits for lead and/or 4.1 µg/day “safe harbor” daily dose limits for
14 cadmium set forth in Proposition 65’s regulations. Very significant is the fact that people are
15 being exposed to lead and/or cadmium through ingestion as opposed to other, less harmful,
16 methods of exposure such as dermal exposure. Ingestion of lead and/or cadmium produces much
17 higher exposure levels and health risks than dermal exposure to these chemicals.

18 27. At all times relevant to this action, DEFENDANT, therefore, has knowingly and
19 intentionally exposed the users of the PRODUCTS to the LISTED CHEMICALS without first
20 giving a clear and reasonable warning to such individuals.

21 28. On June 12, 2018, Plaintiff served NATURADE and each of the appropriate public
22 enforcement agencies with a 60-Day Notice of Proposition 65 violations document entitled
23 “Notice of Violations of California Health & Safety Code §25249.5 (“Notice”). A true and
24 correct copy of the Notice is attached hereto as Exhibit A and incorporated by reference. The
25 Notice was issued pursuant to, and in compliance with, the requirements of H&S Code Section
26 25249.7(d) and the statute’s implementing regulations regarding the notice of the violations to
27 be given to certain public enforcement agencies and to the violator. The Notice included, *inter*
28 *alia*, the following information: the name, address, and telephone number of the noticing

1 individual; the name of the alleged violator; the statute violated; the approximate time period
2 during which violations occurred; and descriptions of the violations, including the chemicals
3 involved, the route of toxic exposure, and the specific product or type of product causing the
4 violations, and was issued as follows:

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

23 29. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures
24 without the warnings required by Proposition 65 since at least June 12, 2017, the one-year period
25 preceding the Notice. These exposures entitle the Court to award civil penalties for the
26 applicable statutory penalty period, which is one year prior to the date of the Notice of Violation.
27 CCP § 340; *Consumer Advocacy Group, Inc.*, 150 Cal.App.4th at 981.

28 30. DEFENDANT's sales of the PRODUCTS have resulted in numerous exposures

1 without the warnings required by Proposition 65 since at least June 12, 2015, the three-year
2 period preceding the Notice that is relevant to Plaintiff's prayer for injunctive relief. H&S Code
3 § 25249.7(a); CCP § 338.

4 31. The imposition of a civil penalty award will have a deterrent economic effect in that
5 it is likely to deter future conduct in violation of Proposition 65 by NATURADE and the
6 regulated community as a whole.

7 32. The PRODUCTS continue to be distributed and sold in California without the
8 requisite warning information.

9 33. At least 60 days have elapsed since Plaintiff sent the Notice to DEFENDANT. The
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a
11 cause of action under Proposition 65 against DEFENDANT based on the allegations herein.

12 34. As a proximate result of acts by DEFENDANT, as a person in the course of doing
13 business within the meaning of H&S Code Section 25249.11, individuals throughout the State
14 of California, including in the County of Alameda, have been exposed to the LISTED
15 CHEMICALS without a clear and reasonable warning. The individuals subject to the illegal
16 exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons
17 exposed to the PRODUCTS.

18 **FIRST CAUSE OF ACTION**

19 **(Injunctive Relief for Violations of Health and Safety Code Section 25249.5, *et seq.***
20 **Concerning the PRODUCTS Described in the June 12, 2018 Proposition 65 Notice**
21 **By Plaintiff Against NATURADE)**

22 35. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if fully
23 set forth herein.

24 36. By committing the acts alleged in this Complaint DEFENDANT, at all times
25 relevant to this action and continuing through the present, has violated H&S Code Section
26 25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals
27 who ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICALS, without first
28 providing a clear and reasonable warning to such individuals pursuant to H&S Code Sections

1 25249.6 and 25249.11(f).

2 37. By the above-described acts, DEFENDANT has violated H&S Code Section
3 25249.6 and is therefore subject to an injunction ordering DEFENDANT to stop violating
4 Proposition 65, to provide warnings to all present and future customers, and to provide warnings
5 to DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a
6 clear and reasonable warning.

7 38. An action for injunctive relief under Proposition 65 is specifically authorized by
8 H&S Code Section 25249.7(a).

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

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

13 **SECOND CAUSE OF ACTION**

14 **(Civil Penalties for Violations of Health and Safety Code Section 25249.5, *et seq.***
15 **Concerning the PRODUCTS Described in the June 12, 2018 Proposition 65 Notice**
16 **By Plaintiff Against NATURADE)**

17 40. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully
18 set forth herein.

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

22 Wherefore, Plaintiff prays for judgment against NATURADE, as set forth hereafter.

23 **THE NEED FOR INJUNCTIVE RELIEF**

24 42. Plaintiff realleges and incorporates by this reference all preceding paragraphs as if
25 set forth below.

26 43. By committing the acts alleged in this Complaint, DEFENDANT has caused
27 irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the absence
28 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury

1 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
2 CHEMICALS through the ingestion of the PRODUCTS.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff accordingly prays for the following relief:

5 A. A temporary restraining order, preliminary and permanent injunction,
6 pursuant to H&S Code Section 25249.7(a), enjoining DEFENDANT, its agents,
7 employees, assigns and all persons acting in concert or participating with
8 DEFENDANT, from distributing or selling the PRODUCTS in California without
9 first providing a clear and reasonable warning, within the meaning of Proposition 65,
10 that the ingestion of the PRODUCTS exposes consumers to the LISTED
11 CHEMICALS;

12 B. An injunctive order, pursuant to H&S Code Section 25249.7(a),
13 compelling DEFENDANT to identify and locate each individual who has purchased
14 the PRODUCTS since June 12, 2015 and to provide a warning to each such person
15 that the use of the PRODUCTS will expose the user to chemicals known to cause
16 cancer, birth defects, and other reproductive harm;

17 C. An assessment of civil penalties pursuant to H&S Code Section
18 25249.7(b), against DEFENDANT in the amount of \$2,500 per day for each
19 violation of Proposition 65;

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

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

24 Dated: September 6, 2018

25 ADAMS BROADWELL JOSEPH & CARDOZO

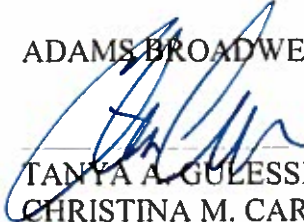
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27 TANYA A. GULESSERIAN
28 CHRISTINA M. CARO
Attorneys for Plaintiff

EXHIBIT A

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June 12, 2018

VIA CERTIFIED MAIL

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VIA FIRST CLASS MAIL

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
June 12, 2018
Page 3

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:

Prevention, LLC, individually and doing business as Naturade

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

1. **Plant Based Vegan Slim High Protein Weight Loss Shake Vanilla - Lead**
2. **Naturade Total Soy Meal Replacement Strawberry Cream - Lead**
3. **Vegan Smart All-In-One Nutritional Shake Wild Berries - Lead**
4. **Vegan Smart Plant Based Pea Protein Vegan Shake Chocolate - Lead**
5. **Vegan Smart Plant Based Protein & Greens Plus Fruits & Roots Vanilla Crème - Lead**
6. **Vegan Smart All-In-One Nutritional Shake Vanilla - Lead**
7. **Vegan Smart All-In-One Nutritional Shake Peaches & Cream - Lead**
8. **Naturade Vegan Smart All-In-One Nutritional Shake Chocolate – Lead, Cadmium**
9. **Vegan Smart Love is Love All-In-One Nutritional Shake Cookies and Cream – Lead, Cadmium**
10. **Vegan Smart Love is Love All-In-One Nutritional Shake Chocolate Raspberry – Lead, Cadmium**
11. **Vegan Smart BAV All-In-One Nutritional Shake Strawberry Shortcake - Lead**
12. **Naturade Total Soy Meal Replacement Bavarian Chocolate - Lead**
13. **Vegan Slim High Protein Weight Loss Shake Chocolate – Lead, 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 Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

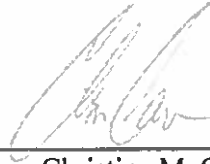
The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The primary route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. 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 and cadmium. Each of these ongoing violations has occurred on every day since June 12, 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 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 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.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
June 12, 2018
Page 5

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,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Prevention, LLC, individually and doing business as Naturade and its Registered Agents for Service of Process only)

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

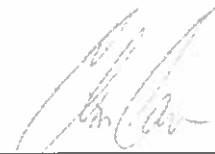
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Prevention, LLC, individually and doing business as Naturade**

I, Christina Caro, declare:

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

Dated: June 12, 2018



Christina M. Caro

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 June 12, 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:

Claude Tellis or Current CEO
Prevention, LLC, individually and
doing business as Naturade
2030 Main Street, Suite 630
Irvine, CA 92614

Cogency Global, Inc.
(Registered Agent for Prevention, LLC,
individually and doing business as Naturade)
850 New Burton Road, Suite 201
Dover, DE 19904

Claude Tellis
(Registered Agent for Prevention, LLC,
individually and doing business as Naturade)
2030 Main Street, Suite 630
Irvine, CA 92614

On June 12, 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 June 12, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

June 12, 2018

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

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

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

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

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

Gregory Alker, Assistant District Attorney
San Francisco County
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San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
cdobroth@co.slo.ca.us

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

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

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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

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

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

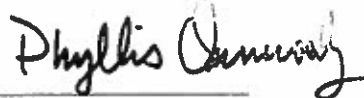
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 12, 2018

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On June 12, 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 June 12, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, reading "Phyllis Dunwoody", written over a horizontal line.

Phyllis Dunwoody

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

June 12, 2018

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Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

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

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

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

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

District Attorney, Merced County
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Merced, CA 95340

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

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

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

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

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

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

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

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

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

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

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

District Attorney, Sierra County
100 Courthouse Square, 2nd Floor
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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