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**FILED**  
**ALAMEDA COUNTY**

**JUN 27 2019**

CLERK OF THE SUPERIOR COURT

*Regina [Signature]* Deputy

6 Attorney for Plaintiff  
 7 ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

Case No. RG19024024<sup>3</sup>

13 Plaintiff,

**FIRST AMENDED COMPLAINT FOR  
 INJUNCTIVE RELIEF AND CIVIL  
 PENALTIES**

14 v.

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

15 GENERAL NUTRITION CORPORATION, a  
 16 Pennsylvania corporation; GENERAL  
 17 NUTRITION COMPANIES, INC., a  
 18 Delaware corporation; GENERAL  
 19 NUTRITION INVESTMENT COMPANY, an  
 20 Arizona corporation; GENERAL  
 21 NUTRITION CENTERS, INC., a Delaware  
 22 corporation; GNC CORPORATION, a  
 23 Delaware corporation; GNC HOLDINGS,  
 24 INC., a Delaware corporation; GNC PARENT  
 LLC, a Delaware limited liability company;  
 GNC HEADQUARTERS, INC., a  
 Pennsylvania corporation; GNC  
 HEADQUARTERS, LLC, a Pennsylvania  
 limited liability company; GNC PARENT  
 CORPORATION, a Delaware corporation;  
 and GNC, INC., a Pennsylvania corporation,

25 Defendants.

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

3 **INTRODUCTION**

4 1. This action seeks to remedy the continuing failure of Defendants GENERAL  
5 NUTRITION CORPORATION, GENERAL NUTRITION COMPANIES, INC., GENERAL  
6 NUTRITION INVESTMENT COMPANY, GENERAL NUTRITION CENTERS, INC., GNC  
7 CORPORATION, GNC HOLDINGS, INC., GNC PARENT LLC, GNC HEADQUARTERS,  
8 INC., GNC HEADQUARTERS, LLC, GNC PARENT CORPORATION, and GNC, INC.  
9 (collectively “GNC” or “DEFENDANTS”) to warn consumers in California that they are being  
10 exposed to lead and/or cadmium, substances known to the State of California to cause cancer,  
11 birth defects, and other reproductive harm. DEFENDANTS manufacture, package, distribute,  
12 market, and/or sell in California certain products containing lead and/or cadmium (collectively,  
13 the “PRODUCTS”):

- 14 **1. GNC SuperFoods Maximum Greens Complete Original Flavor -**  
15 **Lead**
- 16 **2. GNC SuperFoods Cherry Complex Tart & Black Cherries - Lead**
- 17 **3. GNC SuperFoods Spiru-Meal High Protein Energy Shake Vanilla**  
18 **Flavor - Lead**
- 19 **4. GNC SuperFoods Spiru-Meal High Protein Energy Shake**  
20 **Chocolate Flavor – Lead, Cadmium**
- 21 **5. GNC SuperFoods Wheat Grass Nutrient Dense - Lead**
- 22 **6. GNC Total Lean Lean Shake 25 Swiss Chocolate - Lead**
- 23 **7. GNC Total Lean Lean Shake 25 Strawberries & Cream - Lead**
- 24 **8. GNC Total Lean Advanced Lean Shake Burn Calorie-Burning**  
25 **Thermogenic & Whey Protein Blend Cookies & Cream - Lead**
- 26 **9. GNC Total Lean Advanced Lean Shake Burn Calorie-Burning**  
27 **Thermogenic & Whey Protein Blend Strawberry - Lead**
- 28 **10. GNC Total Lean Vegan Lean Shake 25 Natural Chocolate Flavor**

1                   – Lead, Cadmium

2           **11. GNC Total Lean Lean Shake 25 Cookies & Cream - Lead**

3           **12. GNC Total Lean Lean Shake 25 Banana - Lead**

4           **13. GNC Total Lean Lean Shake Clinically Proven Weight Loss**  
5                   **Shake Vanilla Bean - Lead**

6           **14. GNC Total Lean Vegan Lean Shake 25 Natural Vanilla Flavor –**  
7                   **Lead, Cadmium**

8           **15. GNC Total Lean Lean Shake 25 French Vanilla - Lead**

9           **16. GNC Total Lean Lean Shake Clinically Proven Weight Loss**  
10                   **Shake Swiss Chocolate - Lead**

11           **17. GNC MSM/Glucosamine - Lead**

12           **18. GNC Men's Maca Man - Lead**

13           **19. GNC Pro Performance Bulk 1340 Vanilla Ice Cream - Lead**

14           **20. GNC Natural Brand Colon Pure Purified Psyllium Husk**  
15                   **Unflavored - Lead**

16           **21. GNC Women's Prenatal Formula with DHA - Lead**

17           **22. GNC Pro Performance Bulk 1340 Cookies & Cream - Lead**

18           **23. GNC Natural Brand Colon Pure Purified Psyllium Husk Natural**  
19                   **Citrus Flavor- Lead**

20           **24. GNC Pro Performance Bulk 1340 Double Chocolate – Lead,**  
21                   **Cadmium**

22           **25. GNC Pro Performance Bulk 1340 Strawberries & Cream - Lead**

23           **26. GNC Herbal Plus Maca Root - Lead**

24           **27. GNC Herbal Plus Siberian Root - Lead**

25           **28. GNC Pro Performance 100% Casein Chocolate Supreme - Lead**

26           **29. GNC Pro Performance 100% Casein Vanilla Cream - Lead**

27           **30. GNC Pro Performance Weight Gainer Double Chocolate – Lead,**  
28                   **Cadmium**

- 1                   **31. GNC Pro Performance Weight Gainer Strawberries & Cream -**
- 2                   **Lead**
- 3                   **32. GNC Total Lean Lean Shake 25 Vanilla Bean - Lead**
- 4                   **33. GNC Total Lean Lean Shake 25 Banana Cream - Lead**
- 5                   **34. GNC Total Lean Lean Shake 25 Chocolate Peanut Butter - Lead**
- 6                   **35. GNC Total Lean Lean Shake 25 Natural Vanilla - Lead**
- 7                   **36. GNC Total Lean Advanced Waterex Elite - Lead**
- 8                   **37. GNC Total Lean Advanced Diet Cleanse Purifying Complex**
- 9                   **Spiced Apple - Lead**
- 10                  **38. GNC Total Lean Lean Shake 25 Rich Chocolate - Lead**
- 11                  **39. GNC Total Lean Advanced Lean Shake Burn Chocolate Fudge -**
- 12                  **Lead**
- 13                  **40. GNC Total Lean Garcinia Cambogia Soft Chew Berry Punch -**
- 14                  **Lead**
- 15                  **41. GNC Total Lean Lean Shake 25 Orange Cream - Lead**
- 16                  **42. GNC Total Lean Lean Shake 25 Natural Chocolate - Lead**
- 17                  **43. GNC Total Lean Lean Bar Vanilla Birthday Cake - Lead**
- 18                  **44. GNC Total Lean Lean Bar Chocolate Chip - Lead**
- 19                  **45. GNC Total Lean Lean Bar Blueberry Yogurt - Lead**
- 20                  **46. Performix Pro Whey + Chocolate - Lead**
- 21                  **47. Performix Protein Wafers Chocolate Mint - Lead**
- 22                  **48. Performix Pro Gainer + Double Chocolate Brownie - Lead**
- 23                  **49. Performix Pro Gainer + Peanut Butter Brownie - Lead**
- 24                  **50. Performix Pro Whey + SST Mint Chocolate Chip - Lead**
- 25                  **51. Performix ION v2X Cherry Lime Slush - Lead**
- 26                  **52. Performix ION v2X Blackberry Lemonade - Lead**
- 27
- 28

- 1                   **53. Performix Iridium ISO<sup>i</sup> 9:2:2 Cherry Limeade - Lead**
- 2                   **54. Performix Pump Stimfree Perpetual Pump Pre-Workout Cherry**
- 3                   **Limeade - Lead**
- 4                   **55. Performix Iridium SST<sup>i</sup> Blue Razz Ice - Lead**
- 5                   **56. Performix ION Heat Pineapple Express - Lead**
- 6                   **57. Performix ION Build Cotton Candy- Lead**
- 7                   **58. Performix SST Time-Released Energy Original - Lead**
- 8                   **59. Performix Pro Gainer+ Multi-Phase Mass Gainer + Time-Release**
- 9                   **Glutamine Peanut Butter Brownie – Lead**
- 10                  **60. Performix Pump v2X Unrelenting Pump Multi-Phase Pre-**
- 11                  **Workout Patriot Pop - Lead**
- 12                  **61. Performix Pump v2X Unrelenting Pump Multi-Phase Pre-**
- 13                  **Workout Sweet Tea Lemonade - Lead**
- 14                  **62. Performix Pump Stimfree Perpetual Pump Pre-Workout**
- 15                  **Watermelon - Lead**
- 16                  **63. Performix Pump Stimfree Perpetual Pump Pre-Workout Blue Ice**
- 17                  **- Lead**
- 18                  **64. Performix Pro Whey + Super Male T Peanut Butter Cup - Lead**
- 19                  **65. Performix ION v2X Unrelenting Energy Multi Phase Pre-**
- 20                  **Workout Iced Tea - Lead**
- 21                  **66. Performix ION v2X Unrelenting Energy Multi Phase Pre-**
- 22                  **Workout Lemonade - Lead**
- 23                  **67. Performix ION v2X Unrelenting Energy Multi Phase Pre-**
- 24                  **Workout Cherry - Lead**
- 25                  **68. Performix ION v2X Unrelenting Energy Multi Phase Pre-**
- 26                  **Workout Lime - Lead**
- 27                  **69. GNC Mega Men Energy Chocolate - Lead**
- 28                  **70. GNC Mega Men 50 Plus One Daily - Lead**

1 **71. GNC Women's Ultra Mega Energy & Metabolism Vanilla - Lead**

2 **72. GNC Mega Men Energy Vanilla - Lead**

3 **73. GNC Women's Ultra Mega One Daily – Lead**

4 **74. Advanced Nutrition Systems ISO T-Drive Testosterone Booster –**  
5 **Lead**

6 **75. GNC Calcium 600 MG Caramel – Lead**

7 **76. GNC Activated Charcoal 520 MG – Lead**

8 **77. GNC Vitamin C 500 MG – Lead**

9 **78. Syntrax Matrix 5.0 Sustained-Release Protein Blend Milk**  
10 **Chocolate – Lead, Cadmium**

11 **79. Syntrax Matrix 5.0 Sustained-Release Protein Blend Cookies &**  
12 **Cream – Lead, Cadmium**

13 **80. Syntrax Trophix 5.0 Ultra Sustained-Release Protein Chocolate**  
14 **Supreme – Lead**

15 **81. Syntrax Micellar Crème Chocolate Milkshake – Lead**

16 **82. Syntrax Matrix 5.0 Sustained-Release Protein Blend Perfect**  
17 **Chocolate – Lead, Cadmium**

18 **83. Syntrax Matrix 5.0 Sustained-Release Protein Blend Mint Cookie**  
19 **– Lead**

20 **84. Syntrax Trophix 5.0 Ultra Sustained-Release Protein Creamy**  
21 **Vanilla – Lead**

22 **85. Syntrax Trophix 5.0 Ultra Sustained-Release Protein Strawberry**  
23 **Smoothie – Lead**

24 **86. Syntrax Nectar Whey Protein Isolate Lemon Tea - Lead**

25 2. Lead and cadmium (hereinafter, the “LISTED CHEMICALS”) are substances  
26 known to the State<sup>1</sup> of California to cause cancer, birth defects, and other reproductive harm.

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



1 except those given by statute to other trial courts.” The statute under which this action is  
2 brought does not specify any other basis for jurisdiction.

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

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

11 10. On January 29, 2019, March 8, 2019, and April 11, 2019, PLAINTIFF sent 60-  
12 Day Notices of Proposition 65 Violations (“NOTICES”) to the requisite public enforcement  
13 agencies, and to DEFENDANTS. The NOTICES were issued pursuant to, and in compliance  
14 with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations  
15 regarding the notice of the violations to be given to certain public enforcement agencies and to  
16 the violators. The NOTICES included, *inter alia*, the following information: the name,  
17 address, and telephone number of the noticing individuals; the name of the alleged violators;  
18 the statute violated; the approximate time period during which violations occurred; and  
19 descriptions of the violations, including the chemicals involved, the route of toxic exposure,  
20 and the specific product or type of product causing the violations, and were issued as follows:

- 21 a. DEFENDANTS were provided copies of the NOTICES by Certified Mail.
- 22 b. DEFENDANTS were provided copies with the NOTICES of a document  
23 entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986  
24 (Proposition 65): A Summary,” which is also known as Appendix A to Title  
25 27 of CCR §25903.
- 26 c. The California Attorney General was provided copies of the NOTICES via  
27 online submission.
- 28 d. The California Attorney General was provided with a Certificate of Merit



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

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

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

### 15 PARTIES

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

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

22 14. DEFENDANT GENERAL NUTRITION CORPORATION is a  
23 corporation organized under Pennsylvania's Corporation Law and is a person doing  
24 business within the meaning of H&S Code §25249.11.

25 15. DEFENDANT GENERAL NUTRITION COMPANIES, INC. is a  
26 corporation organized under Delaware's Corporation Law and is a person doing business  
27 within the meaning of H&S Code §25249.11.

28 16. DEFENDANT GENERAL NUTRITION INVESTMENT COMPANY is

1 a corporation organized under Arizona's Corporation Law and is a person doing business  
2 within the meaning of H&S Code §25249.11.

3 17. DEFENDANT GENERAL NUTRITION CENTERS, INC. is a  
4 corporation organized under Delaware's Corporation Law and is a person doing business  
5 within the meaning of H&S Code §25249.11.

6 18. DEFENDANT GNC CORPORATION is a corporation organized under  
7 Delaware's Corporation Law and is a person doing business within the meaning of H&S  
8 Code §25249.11.

9 19. DEFENDANT GNC HOLDINGS, INC. is a corporation organized under  
10 Delaware's Corporation Law and is a person doing business within the meaning of H&S  
11 Code §25249.11.

12 20. DEFENDANT GNC PARENT LLC is a limited liability company  
13 organized under Delaware's Corporation Law and is a person doing business within the  
14 meaning of H&S Code §25249.11.

15 21. DEFENDANT GNC HEADQUARTERS, INC. is a corporation organized  
16 under Pennsylvania's Corporation Law and is a person doing business within the  
17 meaning of H&S Code §25249.11.

18 22. DEFENDANT GNC HEADQUARTERS, LLC is a limited liability  
19 company organized under Pennsylvania's Corporation Law and is a person doing  
20 business within the meaning of H&S Code §25249.11.

21 23. DEFENDANT GNC PARENT CORPORATION is a corporation  
22 organized under Delaware's Corporation Law and is a person doing business within the  
23 meaning of H&S Code §25249.11.

24 24. DEFENDANT GNC, INC. is a corporation organized under Pennsylvania's  
25 Corporation Law and is a person doing business within the meaning of H&S Code  
26 §25249.11.

27 25. DEFENDANTS have manufactured, packaged, distributed, marketed and /or  
28 sold the PRODUCTS for sale or use in California and the County of Alameda. ERC is

1 informed and believes, and thereupon alleges, that DEFENDANTS continue to manufacture,  
2 package, distribute, market and/or sell the PRODUCTS for sale or use in California and in  
3 Alameda County.

4 **STATUTORY BACKGROUND**

5 26. The People of the State of California have declared in Proposition 65 their right  
6 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
7 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

8 27. To effectuate this goal, Proposition 65 requires that individuals be provided  
9 with a “clear and reasonable warning” before being exposed to substances listed by the State of  
10 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
11 part:

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

16 28. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of,  
17 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No  
18 knowledge that the discharge, release or exposure is unlawful is required.” (27 California Code  
19 of Regulations (“CCR”) § 25102(n).)

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

25 **FACTUAL BACKGROUND**

26 30. On February 27, 1987, the State of California officially listed the chemical lead  
27 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
28 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 § 25000, *et seq.*;

1 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose  
2 level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR  
3 § 25805(b).)

4 31. On October 1, 1992, the State of California officially listed the chemicals lead  
5 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
6 subject to the warning requirement one year later and were therefore subject to the “clear and  
7 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §  
8 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no  
9 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

10 32. Cadmium was officially listed as a chemical known to cause developmental  
11 toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium  
12 compounds were listed as chemicals known to the State of California to cause cancer on  
13 October 1, 1987. (State of California EPA OEHHA Safe Drinking Water and Toxic  
14 Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and Reproductive  
15 Toxicity.) The MADL for cadmium as a chemical known to cause reproductive toxicity is 4.1  
16 micrograms per day. (Cal. Code Regs., tit. 27, §25805, subd. (b).)

17 33. To test DEFENDANTS’ PRODUCTS for lead and cadmium, PLAINTIFF hired a  
18 well-respected and accredited testing laboratory. The results of testing undertaken by  
19 PLAINTIFF of DEFENDANTS’ PRODUCTS show that the PRODUCTS tested were in  
20 violation of the 0.5 µg/day for lead “safe harbor” daily dose limits and/or the 4.1 µg/day “safe  
21 harbor” daily dose limits for cadmium set forth in Proposition 65’s regulations. Very  
22 significant is the fact that people are being exposed to lead and/or cadmium through ingestion  
23 as opposed to other not as harmful methods of exposure such as dermal exposure.

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

27 35. The PRODUCTS have allegedly been sold by DEFENDANTS for use in  
28 California since at least January 29, 2016. The PRODUCTS continue to be distributed

1 and sold in California without the requisite warning information.

2 36. On January 29, 2019, March 8, 2019, and April 11, 2019, ERC served  
3 DEFENDANTS and each of the appropriate public enforcement agencies with a Proposition 65  
4 Notice, a document entitled “Notice of Violations of California Health & Safety Code Section  
5 25249.5” that provided DEFENDANTS and the public enforcement agencies with notice that  
6 DEFENDANTS were in violation of Proposition 65 for failing to warn purchasers and  
7 individuals using the PRODUCTS that ingestion of the PRODUCTS exposes them to lead  
8 and/or cadmium, chemicals known to the State of California to cause cancer and/or  
9 reproductive toxicity (true and correct copies of the 60-Day NOTICES are attached hereto as  
10 *Exhibits A, B, and C* respectively, and each is incorporated herein by reference).

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

17 **FIRST CAUSE OF ACTION**  
18 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning**  
19 **the products described in the January 29, 2019, March 8, 2019, and April 11, 2019**  
20 **Proposition 65 Notices)**  
21 **(Against All Defendants)**

22 38. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through  
23 37, inclusive, as if specifically set forth herein.

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





1 E. Such other and further relief as may be just and proper.  
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3 DATED: June 27, 2019

LOZEAU | DRURY LLP

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6   
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# EXHIBIT A



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**VIA CERTIFIED MAIL**

Current President or CEO  
GNC Parent Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Parent Corporation)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

Current President or CEO  
GNC, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Registered Agent for GNC, Inc.  
5907 Penn Mall, Ste 210  
Pittsburgh, PA 15206

**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

Stacey Grassini, Deputy District Attorney  
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900 Ward Street  
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sgrassini@contracostada.org

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
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inyoda@inyocounty.us

**VIA ELECTRONIC MAIL**

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

Dije Ndreu, Deputy District Attorney  
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Anne Marie Schubert, District Attorney  
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Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
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Gregory Alker, Assistant District Attorney  
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gregory.alker@sfgov.org

Valerie Lopez, Deputy City Attorney  
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Valerie.Lopez@sfcityatty.org

**VIA ELECTRONIC MAIL**

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  
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County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
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Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

Yen Dang, Supervising Deputy District  
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701 Ocean Street  
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Gregory D. Totten, District Attorney  
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daspecialops@ventura.org

**VIA ELECTRONIC MAIL**

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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:

**General Nutrition Corporation  
General Nutrition Companies, Inc.  
General Nutrition Investment Company  
General Nutrition Centers, Inc.  
GNC Corp.  
GNC Corporation  
GNC Holdings, Inc.  
GNC Parent LLC  
GNC Headquarters, Inc.  
GNC Headquarters, LLC  
GNC Parent Corporation  
GNC, Inc.**

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

- 1. GNC SuperFoods Maximum Greens Complete Original Flavor - Lead**
- 2. GNC SuperFoods Cherry Complex Tart & Black Cherries - Lead**
- 3. GNC SuperFoods Spiru-Meal High Protein Energy Shake Vanilla Flavor - Lead**

4. **GNC SuperFoods Spiru-Meal High Protein Energy Shake Chocolate Flavor – Lead, Cadmium**
5. **GNC SuperFoods Wheat Grass Nutrient Dense - Lead**
6. **GNC Total Lean Lean Shake 25 Swiss Chocolate - Lead**
7. **GNC Total Lean Lean Shake 25 Strawberries & Cream - Lead**
8. **GNC Total Lean Advanced Lean Shake Burn Calorie-Burning Thermogenic & Whey Protein Blend Cookies & Cream - Lead**
9. **GNC Total Lean Advanced Lean Shake Burn Calorie-Burning Thermogenic & Whey Protein Blend Strawberry - Lead**
10. **GNC Total Lean Vegan Lean Shake 25 Natural Chocolate Flavor – Lead, Cadmium**
11. **GNC Total Lean Lean Shake 25 Cookies & Cream - Lead**
12. **GNC Total Lean Lean Shake 25 Banana - Lead**
13. **GNC Total Lean Lean Shake Clinically Proven Weight Loss Shake Vanilla Bean - Lead**
14. **GNC Total Lean Vegan Lean Shake 25 Natural Vanilla Flavor – Lead, Cadmium**
15. **GNC Total Lean Lean Shake 25 French Vanilla - Lead**
16. **GNC Total Lean Lean Shake Clinically Proven Weight Loss Shake Swiss Chocolate - Lead**
17. **GNC MSM/Glucosamine - Lead**
18. **GNC Men's Maca Man - Lead**
19. **GNC Pro Performance Bulk 1340 Vanilla Ice Cream - Lead**
20. **GNC Natural Brand Colon Pure Purified Psyllium Husk Unflavored - Lead**
21. **GNC Women's Prenatal Formula with DHA - Lead**
22. **GNC Pro Performance Bulk 1340 Cookies & Cream - Lead**
23. **GNC Natural Brand Colon Pure Purified Psyllium Husk Natural Citrus Flavor- Lead**
24. **GNC Pro Performance Bulk 1340 Double Chocolate – Lead, Cadmium**
25. **GNC Pro Performance Bulk 1340 Strawberries & Cream - Lead**
26. **GNC Herbal Plus Maca Root - Lead**
27. **GNC Herbal Plus Siberian Root - Lead**
28. **GNC Pro Performance 100% Casein Chocolate Supreme - Lead**
29. **GNC Pro Performance 100% Casein Vanilla Cream - Lead**
30. **GNC Pro Performance Weight Gainer Double Chocolate – Lead, Cadmium**
31. **GNC Pro Performance Weight Gainer Strawberries & Cream - Lead**
32. **GNC Total Lean Lean Shake 25 Vanilla Bean - Lead**
33. **GNC Total Lean Lean Shake 25 Banana Cream - Lead**
34. **GNC Total Lean Lean Shake 25 Chocolate Peanut Butter - Lead**
35. **GNC Total Lean Lean Shake 25 Natural Vanilla - Lead**
36. **GNC Total Lean Advanced Waterex Elite - Lead**
37. **GNC Total Lean Advanced Diet Cleanse Purifying Complex Spiced Apple - Lead**
38. **GNC Total Lean Lean Shake 25 Rich Chocolate - Lead**
39. **GNC Total Lean Advanced Lean Shake Burn Chocolate Fudge - Lead**
40. **GNC Total Lean Garcinia Cambogia Soft Chew Berry Punch - Lead**
41. **GNC Total Lean Lean Shake 25 Orange Cream - Lead**
42. **GNC Total Lean Lean Shake 25 Natural Chocolate - Lead**
43. **GNC Total Lean Lean Bar Vanilla Birthday Cake - Lead**
44. **GNC Total Lean Lean Bar Chocolate Chip - Lead**
45. **GNC Total Lean Lean Bar Blueberry Yogurt - Lead**

- 46. Performix Pro Whey + Chocolate - Lead**
- 47. Performix Protein Wafers Chocolate Mint - Lead**
- 48. Performix Pro Gainer + Double Chocolate Brownie - Lead**
- 49. Performix Pro Gainer + Peanut Butter Brownie - Lead**
- 50. Performix Pro Whey + SST Mint Chocolate Chip - Lead**
- 51. Performix ION v2X Cherry Lime Slush - Lead**
- 52. Performix ION v2X Blackberry Lemonade - Lead**
- 53. Performix Iridium ISO<sup>i</sup> 9:2:2 Cherry Limeade - Lead**
- 54. Performix Pump Stimfree Perpetual Pump Pre-Workout Cherry Limeade - Lead**
- 55. Performix Iridium SST<sup>i</sup> Blue Razz Ice - Lead**
- 56. Performix ION Heat Pineapple Express - Lead**
- 57. Performix ION Build Cotton Candy- Lead**
- 58. Performix SST Time-Released Energy Original - Lead**
- 59. Performix Pro Gainer+ Multi-Phase Mass Gainer + Time-Release Glutamine Peanut Butter Brownie – Lead**
- 60. Performix Pump v2X Unrelenting Pump Multi-Phase Pre-Workout Patriot Pop - Lead**
- 61. Performix Pump v2X Unrelenting Pump Multi-Phase Pre-Workout Sweet Tea Lemonade - Lead**
- 62. Performix Pump Stimfree Perpetual Pump Pre-Workout Watermelon - Lead**
- 63. Performix Pump Stimfree Perpetual Pump Pre-Workout Blue Ice - Lead**
- 64. Performix Pro Whey + Super Male T Peanut Butter Cup - Lead**
- 65. Performix ION v2X Unrelenting Energy Multi Phase Pre-Workout Iced Tea - Lead**
- 66. Performix ION v2X Unrelenting Energy Multi Phase Pre-Workout Lemonade - Lead**
- 67. Performix ION v2X Unrelenting Energy Multi Phase Pre-Workout Cherry - Lead**
- 68. Performix ION v2X Unrelenting Energy Multi Phase Pre-Workout Lime - 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.

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.

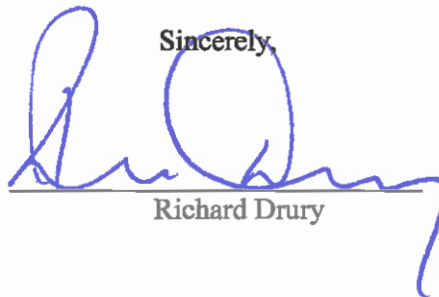
The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended 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 January 29, 2016, 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 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,



Richard Drury

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to General Nutrition Corporation, General Nutrition Companies, Inc., General Nutrition Investment Company, General Nutrition Centers, Inc., GNC Corp., GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, GNC Headquarters, Inc., GNC Headquarters, LLC, GNC Parent Corporation and GNC, Inc. and their Registered Agents for Service of Process only)

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




**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Growing Naturals, LLC and Axiom Foods, Inc. General Nutrition Corporation, General Nutrition Companies, Inc., General Nutrition Investment Company, General Nutrition Centers, Inc., GNC Corp., GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, GNC Headquarters, Inc., GNC Headquarters, LLC, GNC Parent Corporation and GNC, Inc.**

I, Richard Drury, 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: January 29, 2019

  
Richard Drury

**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 January 29, 2019 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  
General Nutrition Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
General Nutrition Investment Company  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Corporation)  
818 W 7<sup>th</sup> St, Ste 930  
Los Angeles, CA 90017

Current President or CEO  
General Nutrition Investment Company  
1002 S 63<sup>rd</sup> Ave  
Phoenix, AZ 85043

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Corporation)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

National Registered Agents Inc.  
(Registered Agent for General Nutrition Investment Company)  
3800 N Central Ave, Ste 460  
Phoenix, AZ 85012

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Corporation)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

Current President or CEO  
General Nutrition Centers, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
General Nutrition Companies, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Centers, Inc.)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Companies, Inc.)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

Current President or CEO  
GNC Corp.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

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

January 29, 2019

Page 10

Barros, McNamara, Scanlon  
Malkiewicz & Taylor, P.A.  
(Registered Agent for GNC Corp.)  
2 West Loockerman St  
PO Box 1298  
Dover, DE 19903

Current President or CEO  
GNC Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Corporation)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

Current President or CEO  
GNC Holdings, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Holdings, Inc.)  
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Dover, DE 19904

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(Registered Agent for GNC Holdings, Inc.)  
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Harrisburg, PA 17101

Current President or CEO  
GNC Parent LLC  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Parent LLC)  
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Dover, DE 19904

Current President or CEO  
GNC Headquarters, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
GNC Headquarters, LLC  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

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GNC Parent Corporation  
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(Registered Agent for GNC Parent Corporation)  
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Harrisburg, PA 17101

Current President or CEO  
GNC, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Registered Agent for GNC, Inc.  
5907 Penn Mall, Ste 210  
Pittsburgh, PA 15206

On January 29, 2019 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 January 29, 2019 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

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

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

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Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

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901 G Street  
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Prop65@sacda.org

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Inyo County  
168 North Edwards Street  
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inyoda@inyocounty.us

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San Diego City Attorney  
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San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

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732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
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San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

January 29, 2019

Page 12

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Prop65@co.tulare.ca.us

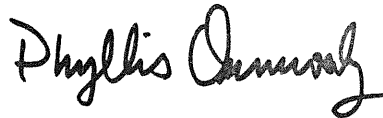
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San Jose, CA 95110  
EPU@da.sccgov.org

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  
cfepd@yolocounty.org

On January 29, 2019 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 January 29, 2019, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

Service List

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, 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  
778 Pacific St  
Placerville, CA 95667

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

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

District Attorney,  
Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

District Attorney, Lake  
County  
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Lakeport, CA 95453

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

District Attorney,  
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Avenue  
Madera, CA 93637

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District Attorney, Mono  
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Bridgeport, CA 93517

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

District Attorney, Plumas  
County  
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404  
Quincy, CA 95971

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

District Attorney, San  
Bernardino County  
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San Bernadino, CA  
92415

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Diego County  
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Suite 1300  
San Diego, CA 92101

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Mateo County  
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Floor  
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94063

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County  
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County  
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800  
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Office  
200 East Santa Clara  
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16th Floor  
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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.<sup>1</sup> 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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.



**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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# EXHIBIT B



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www.lozeaudrury.com  
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General Nutrition Investment Company  
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Dover, DE 19903

March 8, 2019

Page 2

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**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:

**General Nutrition Corporation**  
**General Nutrition Companies, Inc.**  
**General Nutrition Investment Company**  
**General Nutrition Centers, Inc.**  
**GNC Corp.**  
**GNC Corporation**  
**GNC Holdings, Inc.**  
**GNC Parent LLC**  
**GNC Headquarters, Inc.**  
**GNC Headquarters, LLC**  
**GNC Parent Corporation**  
**GNC, Inc.**



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

- 1. GNC Mega Men Energy Chocolate - Lead**
- 2. GNC Mega Men 50 Plus One Daily - Lead**
- 3. GNC Women's Ultra Mega Energy & Metabolism Vanilla - Lead**
- 4. GNC Mega Men Energy Vanilla - Lead**
- 5. GNC Women's Ultra Mega One Daily - 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 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 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 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 March 8, 2016, 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 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

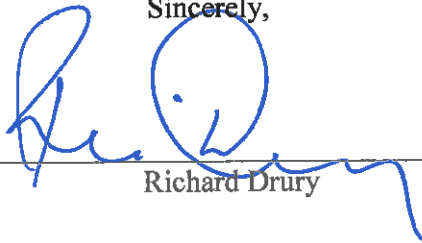
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 8, 2019

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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,



Richard Drury

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to General Nutrition Corporation, General Nutrition Companies, Inc., General Nutrition Investment Company, General Nutrition Centers, Inc., GNC Corp., GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, GNC Headquarters, Inc., GNC Headquarters, LLC, GNC Parent Corporation and GNC, Inc. and their Registered Agents for Service of Process only)

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

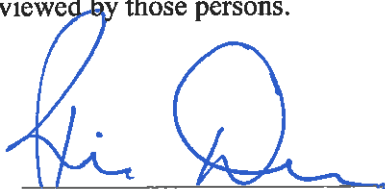
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Growing Naturals, LLC and Axiom Foods, Inc. General Nutrition Corporation, General Nutrition Companies, Inc., General Nutrition Investment Company, General Nutrition Centers, Inc., GNC Corp., GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, GNC Headquarters, Inc., GNC Headquarters, LLC, GNC Parent Corporation and GNC, Inc.**

I, Richard Drury, 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 chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 8, 2019

  
Richard Drury

**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 March 8, 2019, 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  
General Nutrition Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
General Nutrition Investment Company  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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On March 8, 2019, 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 March 8, 2019, 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.*

March 8, 2019

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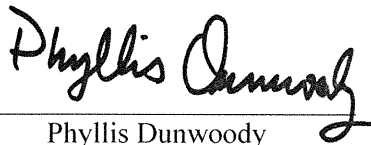
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On March 8, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto 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 March 8, 2019, 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.<sup>1</sup> 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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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Santa Cruz, CA 95060  
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Stephan R. Passalacqua, District Attorney  
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600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
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Visalia, CA 95370  
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Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
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 FIRST CLASS MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**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:

**General Nutrition Corporation  
General Nutrition Companies, Inc.  
General Nutrition Investment Company  
General Nutrition Centers, Inc.  
GNC Corporation  
GNC Holdings, Inc.  
GNC Parent LLC  
GNC Headquarters, Inc.  
GNC Headquarters, LLC  
GNC Parent Corporation  
GNC, Inc.**

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

- 1. Advanced Nutrition Systems ISO T-Drive Testosterone Booster - Lead**
- 2. GNC Calcium 600 MG Caramel - Lead**

- 3. GNC Activated Charcoal 520 MG - Lead**
- 4. Solgar Prenatal Nutrients - Lead**
- 5. GNC Vitamin C 500 MG - Lead**
- 6. Syntrax Matrix 5.0 Sustained-Release Protein Blend Milk Chocolate – Lead, Cadmium**
- 7. Syntrax Matrix 5.0 Sustained-Release Protein Blend Cookies & Cream – Lead, Cadmium**
- 8. Syntrax Trophix 5.0 Ultra Sustained-Release Protein Chocolate Supreme - Lead**
- 9. Syntrax Micellar Crème Chocolate Milkshake - Lead**
- 10. Syntrax Matrix 5.0 Sustained-Release Protein Blend Perfect Chocolate – Lead, Cadmium**
- 11. Syntrax Matrix 5.0 Sustained-Release Protein Blend Mint Cookie - Lead**
- 12. Syntrax Trophix 5.0 Ultra Sustained-Release Protein Creamy Vanilla - Lead**
- 13. Syntrax Trophix 5.0 Ultra Sustained-Release Protein Strawberry Smoothie - Lead**
- 14. Syntrax Nectar Whey Protein Isolate Lemon Tea - 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.

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 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 and/or cadmium 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 and/or cadmium. Each of these ongoing violations has occurred on every day since April 11, 2016, 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.

April 11, 2019

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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 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,



Rebecca Davis

**Attachments**

**Certificate of Merit**

**Certificate of Service**

**OEHHA Summary (to General Nutrition Corporation, General Nutrition Companies, Inc., General Nutrition Investment Company, General Nutrition Centers, Inc., GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, GNC Headquarters, Inc., GNC Headquarters, LLC, GNC Parent Corporation and GNC, Inc. and their Registered Agents for Service of Process only)**

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by General Nutrition Corporation, General Nutrition Companies, Inc., General Nutrition Investment Company, General Nutrition Centers, Inc., GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, GNC Headquarters, Inc., GNC Headquarters, LLC, GNC Parent Corporation and GNC, Inc.**

I, Rebecca Davis, 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: April 11, 2019

  
\_\_\_\_\_  
Rebecca Davis

**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 April 11, 2019, 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  
General Nutrition Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Corporation)  
818 W 7<sup>th</sup> St, Ste 930  
Los Angeles, CA 90017

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Corporation)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Corporation)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

Current President or CEO  
General Nutrition Companies, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Companies, Inc.)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Companies, Inc.)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

Current President or CEO  
General Nutrition Investment Company  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
General Nutrition Investment Company  
1002 S 63<sup>rd</sup> Ave  
Phoenix, AZ 85043

National Registered Agents Inc.  
(Registered Agent for General Nutrition Investment Company)  
3800 N Central Ave, Ste 460  
Phoenix, AZ 85012

Current President or CEO  
General Nutrition Centers, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for General Nutrition Centers, Inc.)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

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

April 11, 2019

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National Registered Agents, Inc.  
(Registered Agent for General Nutrition  
Centers, Inc.)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

Current President or CEO  
GNC Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Corporation)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

Current President or CEO  
GNC Holdings, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Holdings, Inc.)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

National Registered Agents, Inc.  
(Registered Agent for GNC Holdings, Inc.)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

Current President or CEO  
GNC Parent LLC  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Parent LLC)  
160 Greentree Dr, Ste 101  
Dover, DE 19904

Current President or CEO  
GNC Headquarters, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
GNC Headquarters, LLC  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Headquarters, LLC)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

Current President or CEO  
GNC Parent Corporation  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

National Registered Agents, Inc.  
(Registered Agent for GNC Parent Corporation)  
600 N. 2<sup>nd</sup> St, Ste 401  
Harrisburg, PA 17101

Current President or CEO  
GNC, Inc.  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Current President or CEO  
GNC, Inc.  
5907 Penn Mall, Ste 210  
Pittsburgh, PA 15206

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

April 11, 2019

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On April 11, 2019, 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 April 11, 2019, 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  
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7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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CEPD@countyofnapa.org

Barbara Yook, District Attorney  
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San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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sgrassini@contracostada.org

Anne Marie Schubert, District Attorney  
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901 G Street  
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168 North Edwards Street  
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 11, 2019

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Christopher Dalbey, Deputy District Attorney  
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1112 Santa Barbara Street  
Santa Barbara, CA 93101  
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Yen Dang, Supervising Deputy District Attorney  
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San Jose, CA 95110  
EPU@da.sccgov.org

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

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

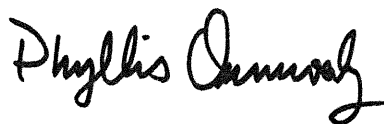
Phillip J. Cline, District Attorney  
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Ventura, CA 93009  
daspecialops@ventura.org

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

On April 11, 2019, 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 April 11, 2019, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

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, 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  
778 Pacific St  
Placerville, CA 95667

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

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

District Attorney, Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, 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

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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  
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District Attorney, Nevada County  
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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 Bernadino, CA 92415

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

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

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

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
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 2<sup>nd</sup> Street  
Yuba City, CA 95991

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

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

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

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

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

San 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.<sup>1</sup> 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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto:P65Public.Comments@oehha.ca.gov).

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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.