

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
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By: Danielle Harbour,
Deputy Clerk

1 Credence Sol (SBN 219784)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: credence@credencesol.onmicrosoft.com

7 Attorneys for Plaintiff Environmental Research Center, Inc.

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

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

15 **Plaintiff,**
16 **vs.**

17 **NUTRITIONAL MEDICINALS, LLC,
18 individually and dba FUNCTIONAL
19 FORMULARIES; DANONE US, LLC,
20 individually and dba FUNCTIONAL
21 FORMULARIES; DANONE NORTH
22 AMERICA PUBLIC BENEFIT
23 CORPORATION, individually and dba
24 FUNCTIONAL FORMULARIES; DANONE
25 US, INC., individually and dba
26 FUNCTIONAL FORMULARIES; DANONE
27 NORTH AMERICA LLC, individually and
28 dba FUNCTIONAL FORMULARIES; and
DOES 1-100**

29
30 **Defendants.**

31 **CASE NO. 26CV165203**

32 **COMPLAINT FOR INJUNCTIVE
33 AND DECLARATORY RELIEF AND
34 CIVIL PENALTIES**

35 [Miscellaneous Civil Complaint (42)]
36 Proposition 65, Health & Safety Code
37 Section 25249.5 et seq.]

38 Plaintiff Environmental Research Center, Inc. hereby alleges:

39 **I**

40 **INTRODUCTION**

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

1 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement
2 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,”
3 mandates that businesses with ten or more employees must provide a “clear and reasonable
4 warning” prior to exposing any individual to a chemical known to the state to cause cancer or
5 reproductive toxicity. Lead and perfluorooctanoic Acid (PFOA) are chemicals known to the
6 State of California to cause cancer and/or birth defects, and other reproductive harm. This
7 Complaint seeks injunctive and declaratory relief and civil penalties to remedy the ongoing
8 failure of Defendants Nutritional Medicinals, LLC, individually and dba Functional
9 Formularies, Danone US, LLC, individually and dba Functional Formularies, Danone North
10 America Public Benefit Corporation, individually and dba Functional Formularies, Danone US,
11 Inc., individually and dba Functional Formularies, and Danone North America LLC,
12 individually and dba Functional Formularies (collectively the “Functional Formularies
13 Entities”) and Does 1-100 (hereinafter individually referred to as “Defendant” or collectively as
14 “Defendants”), to warn consumers that they have been exposed to lead and/or PFOA from a
15 number of the Functional Formularies Entities’ nutritional health products as set forth in
16 paragraph 3 at levels exceeding the applicable Maximum Allowable Dose Level (“MADL”) and
17 requiring a warning pursuant to Health & Safety Code section 25249.6.

18 **II**

19 **PARTIES**

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

24 3. The Functional Formularies Entities are each a business that develops, manufactures,
25 markets, distributes, and/or sells nutritional health products that have exposed users to lead
26 and/or PFOA in the State of California within the relevant statute of limitations period. These
27 “SUBJECT PRODUCTS” (as identified in the Notice of Violation dated October 27, 2025,
28 attached hereto as **Exhibit A**) are: (1) Functional Formularies Liquid Hope Organic Whole

1 Foods Meal Replacement Original Formula Complete Plant Based Nutrition (Lead), (2)
2 Functional Formularies Liquid Hope Organic Whole Foods Meal Replacement Peptide Formula
3 Complete Plant Based Nutrition (Lead), (3) Functional Formularies Liquid Hope Organic
4 Whole Foods Meal Replacement Peptide HP Formula High Protein Complete Plant Based
5 Nutrition (Lead), (4) Functional Formularies Liquid Hope Organic Whole Foods Meal
6 Replacement Peptide Formula Berry Medley Complete Plant Based Nutrition (Lead), (5)
7 Functional Formularies Nourish Organic Whole Foods Meal Replacement Original Formula
8 Complete Plant Based Nutrition (Lead), (6) Functional Formularies Nourish Organic Whole
9 Foods Meal Replacement Peptide Formula Complete Plant Based Nutrition (Lead, PFOA), (7)
10 Functional Formularies Nourish Organic Whole Foods Meal Replacement Peptide Formula
11 Berry Medley Complete Plant Based Nutrition (Lead), and (8) Functional Formularies Keto
12 Organic Whole Food-Based Meal Replacement Ketogenic Formula Plant Based Nutrition
13 (PFOA). Nutritional Medicinals, LLC, individually and dba Functional Formularies, Danone
14 US, LLC, individually and dba Functional Formularies, Danone North America Public Benefit
15 Corporation, individually and dba Functional Formularies, Danone US, Inc., individually and
16 dba Functional Formularies, and Danone North America LLC, individually and dba Functional
17 Formularies are companies subject to Proposition 65 as each company employs ten or more
18 persons and has employed ten or more persons at all times relevant to this action.

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

26 **III**

27 **JURISDICTION AND VENUE**

28 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,

1 which grants the Superior Court original jurisdiction in all causes except those given by statute
2 to other trial courts. The statute under which this action is brought does not specify any other
3 basis for jurisdiction.

4 6. This Court has jurisdiction over the Functional Formularies Entities because the
5 Functional Formularies Entities have sufficient minimum contacts with California, and
6 otherwise intentionally avails themselves of the California market through the marketing,
7 distribution, and/or sale of the SUBJECT PRODUCTS in the State of California so as to render
8 the exercise of jurisdiction over them by the California courts consistent with traditional notions
9 of fair play and substantial justice.

10 7. The Complaint is based on allegations contained in the Notice of Violation dated
11 October 27, 2025, served on the California Attorney General, other public enforcers, and the
12 Functional Formularies Entities. The Notice of Violation constitutes adequate notice to the
13 Functional Formularies Entities because it provided adequate information to allow the
14 Functional Formularies Entities to assess the nature of the alleged violations, consistent with
15 Proposition 65 and its implementing regulations. A certificate of merit and a certificate of
16 service accompanied each copy of the Notice of Violation, and both certificates comply with
17 Proposition 65 and its implementing regulations. The Notice of Violation served on the
18 Functional Formularies Entities also included a copy of “The Safe Drinking Water and Toxic
19 Enforcement Act of 1986 (Proposition 65): A Summary.” Service of the Notice of Violation and
20 accompanying documents complied with Proposition 65 and its implementing regulations.
21 Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Violation and
22 associated documents. More than 60 days have passed since ERC mailed the Notice of
23 Violation, and no public enforcement entity has filed a Complaint in this case.

24 8. This Court is the proper venue for the action because the causes of action have arisen in
25 the County of Alameda where some of the violations of law have occurred, and will continue to
26 occur, due to the ongoing sale of the Functional Formularies Entities’ products. Furthermore,
27 venue is proper in this Court under Code of Civil Procedure section 395.5 and Health & Safety
28 Code section 25249.7.

IV

STATUTORY BACKGROUND

9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as “Proposition 65” by an overwhelming majority vote of the people in November of 1986.

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

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

11. The Office of Environmental Health Hazard Assessment (“OEHHA”), a division of the California Environmental Protection Agency (“Cal EPA”), is the lead agency in charge of the implementation of Proposition 65. OEHHA administers the Proposition 65 program and administers regulations that govern Proposition 65 in general, including warnings to comply with the statute. The warning regulations are found in Title 27 of the California Code of Regulations, Article 6. The regulations define expose as “to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. An individual may come into contact with a listed chemical through water, air, food, consumer products and any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27, § 25102, subd. (i).)

12. In this case, the exposures are caused by consumer products. A consumer product is defined as “any article, or component part thereof, including food, that is produced, distributed, or sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, § 25600.1, subd. (d.)) Food “includes ‘dietary supplements’ as defined in California Code of Regulations, title 17, section 10200.” (*Id.* at subd. (g.)) A consumer product exposure is “an exposure that results from a person’s acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at

1 subd. (e).)

2 13. On August 30, 2016, the Office of Administrative Law approved the adoption of
3 OEHHA's amendments to Article 6, Clear and Reasonable Warnings of the California Code of
4 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the
5 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed
6 sections with new regulations set forth in two new Subarticles to Article 6 that became
7 operative on August 30, 2018 (the "New Warning Regulations"). The New Warning
8 Regulations provide, among other things, methods of transmission and content of warnings
9 deemed to comply with Proposition 65. The Functional Formularies Entities are subject to the
10 warning requirements set forth in the New Warning Regulations that became operative on
11 August 30, 2018.

12 14. Health & Safety Code section 25249.6 provides that "No person in the course of doing
13 business shall knowingly and intentionally expose any individual to a chemical known to the
14 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
15 to such individual" The New Warning Regulations apply when clear and reasonable
16 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,
17 consumer product warnings "must be prominently displayed on a label, labeling, or sign, and
18 must be displayed with such conspicuousness as compared with other words, statements,
19 designs or devices on the label, labeling, or sign, as to render the warning likely to be seen,
20 read, and understood by an ordinary individual under customary conditions of purchase or use."
21 (*Id.* at § 25601, subd. (c).)

22 15. Proposition 65 establishes a procedure by which the State is to develop a list of
23 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code,
24 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after
25 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

26 16. Lead was listed as a chemical known to the State of California to cause developmental
27 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
28 listed as a chemical known to the State of California to cause cancer on October 1, 1992.

1 (OEHHA Chemicals Considered or Listed Under Proposition 65 -
2 <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.) The MADL for lead
3 as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code
4 Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15
5 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

6 17. Perfluorooctanoic acid (PFOA) was listed as a chemical known to the State of California
7 to cause development toxicity on November 10, 2017. On February 25, 2022, the State of
8 California officially listed perfluorooctanoic acid (PFOA) as a chemical known to cause cancer
9 (OEHHA Chemicals Considered or Listed Under Proposition 65 -
10 <https://oehha.ca.gov/proposition-65/chemicals/perfluorooctanoic-acid-pfoa-and-its-salts>).

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

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

21 **V**

22 **STATEMENT OF FACTS**

23 20. The Functional Formularies Entities have developed, manufactured, marketed,
24 distributed, and/or sold the SUBJECT PRODUCTS containing lead and/or PFOA into the State
25 of California, including into Alameda County. Consumption of the SUBJECT PRODUCTS
26 according to the directions and/or recommendations provided for said products causes
27 consumers to be exposed to lead, at levels exceeding the 0.5 micrograms per day MADL, and to
28 PFOA and requires a warning. Consumers have been ingesting these products for many years,

without any knowledge of their exposure to these very dangerous chemicals.

21. For many years, the Functional Formularies Entities have knowingly and intentionally exposed numerous persons to lead and/or PFOA without providing any type of Proposition 65 warning. Prior to ERC's Notice of Violation and this Complaint, the Functional Formularies Entities failed to provide a warning on the labels of the SUBJECT PRODUCTS or provide any other legally acceptable warning. the Functional Formularies Entities have, at all times relevant hereto, been aware that the SUBJECT PRODUCTS contained lead and/or PFOA and that persons using these products have been exposed to these chemicals. the Functional Formularies Entities have been aware of the presence of lead and/or PFOA in the SUBJECT PRODUCTS and have failed to disclose the presence of these chemicals to the public, who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to the companies' statements.

22. Both prior and subsequent to ERC's Notice of Violation, the Functional Formularies Entities failed to provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that they have been exposed to chemicals known to the State of California to cause cancer and/or birth defects, and other reproductive harm. This failure to warn is ongoing.

FIRST CAUSE OF ACTION

(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65)

23. ERC refers to paragraphs 1-22, inclusive, and incorporates them herein by this reference.

24. By committing the acts alleged above, the Functional Formularies Entities have, in the course of doing business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead and/or PFOA, chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, without first giving clear and reasonable warning to such individuals within the meaning of Health & Safety Code section 25249.6. In doing so, the Functional Formularies Entities have violated Health & Safety Code section 25249.6 and continue to violate the statute with each successive sale of the SUBJECT PRODUCTS.

25. Said violations render the Functional Formularies Entities liable for civil penalties, up to \$2,500 per day for each violation, and subject the Functional Formularies Entities to injunction.

SECOND CAUSE OF ACTION

(Declaratory Relief)

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

27. There exists an actual controversy relating to the legal rights and duties of the Parties, within the meaning of Code of Civil Procedure section 1060, between ERC and the Functional Formularies Entities, concerning whether the Functional Formularies Entities have exposed individuals to chemicals known to the State of California to cause cancer and/or birth defects, and other reproductive harm without providing clear and reasonable warning.

VI

PRAYER

WHEREFORE ERC prays for relief as follows:

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

2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7, subd. (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders as are necessary to prevent the Functional Formularies Entities from exposing persons to lead and/or PFOA without providing clear and reasonable warning;

3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring that the Functional Formularies Entities have exposed individuals to lead and/or PFOA without providing clear and reasonable warning; and

4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5 or the substantial benefit theory;

5. For costs of suit herein; and

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

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1 DATED: January 16, 2026

ENVIRONMENTAL RESEARCH CENTER, INC.

3 *Credence Sol*

4 Credence Sol

5 Attorneys for Plaintiff Environmental Research Center,
6 Inc.

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6 **EXHIBIT A**
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Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

October 27, 2025

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

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

Nutritional Medicinals, LLC, individually and dba Functional Formularies
Danone US, LLC, individually and dba Functional Formularies
Danone North America Public Benefit Corporation, individually and dba
Functional Formularies
Danone US, Inc., individually and dba Functional Formularies
Danone North America LLC, individually and dba Functional Formularies

October 27, 2025

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

1. **Functional Formularies Liquid Hope Organic Whole Foods Meal Replacement Original Formula Complete Plant Based Nutrition - Lead**
2. **Functional Formularies Liquid Hope Organic Whole Foods Meal Replacement Peptide Formula Complete Plant Based Nutrition - Lead**
3. **Functional Formularies Liquid Hope Organic Whole Foods Meal Replacement Peptide HP Formula High Protein Complete Plant Based Nutrition - Lead**
4. **Functional Formularies Liquid Hope Organic Whole Foods Meal Replacement Peptide Formula Berry Medley Complete Plant Based Nutrition - Lead**
5. **Functional Formularies Nourish Organic Whole Foods Meal Replacement Original Formula Complete Plant Based Nutrition - Lead**
6. **Functional Formularies Nourish Organic Whole Foods Meal Replacement Peptide Formula Complete Plant Based Nutrition – Lead, Perfluorooctanoic Acid (PFOA)**
7. **Functional Formularies Nourish Organic Whole Foods Meal Replacement Peptide Formula Berry Medley Complete Plant Based Nutrition - Lead**
8. **Functional Formularies Keto Organic Whole Food-Based Meal Replacement Ketogenic Formula Plant Based Nutrition -Perfluorooctanoic Acid (PFOA)**

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.

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 27, 2022, as well as every day since the products were introduced into the California marketplace and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

October 27, 2025

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Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as 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 as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the office address and telephone number indicated on the letterhead or at credence@credencesol.onmicrosoft.com** or Chris Heptinstall, Executive Director of ERC, or Charles Poss, In-House Counsel for ERC, at charles.poss@erc501c3.org.

Sincerely,

Credence Sol

Credence Sol
Attorney for Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutritional Medicinals, LLC, individually and dba Functional Formularies, Danone US, LLC, individually and dba Functional Formularies, Danone North America Public Benefit Corporation, individually and dba Functional Formularies, Danone US, Inc., individually and dba Functional Formularies, and Danone North America LLC, individually and dba Functional Formularies and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Nutritional Medicinals, LLC, individually and dba Functional Formularies, Danone US, LLC, individually and dba Functional Formularies, Danone North America Public Benefit Corporation, individually and dba Functional Formularies, Danone US, Inc., individually and dba Functional Formularies, and Danone North America LLC, individually and dba Functional Formularies

I, Credence Sol, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party, Environmental Research Center.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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.

Credence Sol

Dated: October 27, 2025

Credence Sol

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On October 27, 2025, 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:

Dan Magliocco, President
or Current President or CEO
Danone US, LLC, individually and dba Functional Formularies, Danone North America Public Benefit Corporation, individually and dba Functional Formularies, Danone US, Inc., individually and dba Functional Formularies, and Danone North America LLC, individually and dba Functional Formularies
1 Maple Avenue
White Plains, NY 10605

National Registered Agents, Inc.
(Registered Agent for Nutritional Medicinals, LLC, individually and dba Functional Formularies)
1209 N. Orange St
Wilmington, DE 19801

Victor A. Walton, Jr.
(Registered Agent for Nutritional Medicinals, LLC, individually and dba Functional Formularies)
301 East Fourth St, Ste 3500
Cincinnati, OH 45202

Dan Magliocco, President
or Current President or CEO
Danone US, LLC, individually and dba Functional Formularies, Danone North America Public Benefit Corporation, individually and dba Functional Formularies, Danone US, Inc., individually and dba Functional Formularies, and Danone North America LLC, individually and dba Functional Formularies
1900 Cherry Street
Louisville, CO 80027

Corporate Creations Network Inc.
(Registered Agent for Danone US, LLC, individually and dba Functional Formularies)
7801 Folsom Blvd #202
Sacramento, CA 95826

Corporate Creations Network Inc.
(Registered Agent for Danone US, LLC, individually and dba Functional Formularies, Danone North America Public Benefit Corporation, individually and dba Functional Formularies, Danone US, Inc., individually and dba Functional Formularies, and Danone North America LLC, individually and dba Functional Formularies)
1521 Concord Pike, Ste 201
Wilmington, DE 19803

Corporate Creations Network Inc.
(Registered Agent for Danone US, LLC, individually and dba Functional Formularies)
600 Mamaroneck Avenue #400
Harrison, NY 10528

Current President or CEO
Nutritional Medicinals, LLC, individually and dba Functional Formularies
9277 Centre Pointe Drive Ste 220
West Chester, OH 45069

Corporate Creations Network Inc.
(Registered Agent for Danone US, Inc., individually and dba Functional Formularies)
155 E. Boardwalk Dr #490
Fort Collins, CO 80525

On October 27, 2025, 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
Post Office Box 70550
Oakland, CA 94612-0550

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

October 27, 2025

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On October 27, 2025, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

Royl Roberts, Interim 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
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney
Nevada County
201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
Plumas County
520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com

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

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

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

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatty.org

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

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

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

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

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

Carla Rodriguez, District Attorney
Sonoma County
600 Administration Dr, Rm 212
Santa Rosa CA 95403
ECLD@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

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On October 27, 2025, 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 October 27, 2025, in Fort Oglethorpe, Georgia.



Debra Wright

Service List

District Attorney, Alpine County P.O. Box 248 17300 Hwy 89 Markleeville, CA 96120	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Madera County 300 South G Street, Ste 300 Madera, CA 93637	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

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