

Michael Freund SBN 99687  
Law Office of Michael Freund  
1915 Addison Street  
Berkeley, CA 94704  
Telephone: (510) 540-1993  
Facsimile: (510) 540-5543

Attorney for Plaintiff  
Environmental Research Center

**ENDORSED  
FILED**  
San Francisco County Superior Court  
SEP 21 2011  
CLERK OF THE COURT  
BY: ERICKA LARNAUTI  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**ENVIRONMENTAL RESEARCH CENTER,**  
a California non-profit corporation

Plaintiff

v.

**ORANGE PEEL ENTERPRISES, INC.**  
and **DOES 1-100**

Defendants.

Case No. CGC-11-512614

**[PROPOSED] CONSENT  
JUDGMENT**

Date: September 21, 2011  
Time: 9:30 a.m.  
Dept.: 302

**I. INTRODUCTION**

1.1. On July 20, 2011, Plaintiff Environmental Research Center ("ERC") as a private attorney general and in the public interest filed a Complaint for Injunctive Relief and Civil Penalties against Defendant Orange Peel Enterprises, Inc. ("Orange Peel"). The Complaint alleges that Orange Peel violated Health and Safety Code section 25249.6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as "Proposition 65,") through the sale of various nutritional/dietary supplements by failing to provide a clear and reasonable warning.

1.2. The Complaint is based on allegations contained in Notices of Violation dated October 4, 2010, October 22, 2010, and January 14, 2011 served on the California Attorney General, other public enforcers and Orange Peel. A true and correct copy of these Notices of Violation is attached hereto as Exhibit A.

1.3. Plaintiff 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.

1.4. Defendant Orange Peel is a business entity that manufactures, distributes and/or sells The following products for sale in the state of California: Greens Plus Wild Berry Burst, Greens Plus – The Original Superfood, Greens Plus – Orange GreenSicle, Greens Plus – Organic Superfood, Greens Plus Amazon Chocolate 15 Day Supply Powder, Greens Plus Organic Superfood 15 Day Supply Powder, Greens Plus Wild Berry Burst 15 Stick Packs (8.9 g), Greens Plus Orange Greensicle (267 g) Powder and Greens Plus Amazon Chocolate 30 Day Supply Powder (“Covered Products”). Orange Peel is a company that employs ten or more persons.

1.5. The Parties enter into this Consent Judgment in order to achieve a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged litigation. Plaintiff ERC has diligently prosecuted this matter and is settling this case in the public interest.

1.6. Nothing in the Consent Judgment shall be construed as an admission by Orange Peel of any fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by Orange Peel of any fact, issue of law or violation of law, at any time, for any purpose. Nothing in the Consent Judgment shall prejudice, waive or

impair any right, remedy or defense that Orange Peel may have in any other or further legal proceedings. Nothing in the Consent Judgment or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by Orange Peel as to any fault, wrongdoing or liability whatsoever.

## **II. JURISDICTION AND VENUE**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to the terms set forth herein.

## **III. INJUNCTIVE RELIEF –BEST EFFORTS TO REDUCE LEAD LEVELS AND TESTING**

### **3.1 Best Efforts to Reduce Lead levels in Covered Products**

Orange Peel shall engage in best efforts to reduce lead levels in the Covered Products including but not limited to developing stricter lead specifications with suppliers of ingredients, evaluating methods to reduce dosage and where feasible requesting that farms from which ingredients are purchased, research for potential use, the application of soil amendments such as lime, phosphate and/or compost on said plants and herbs as a means by which the amount of lead in the Covered Products can be reduced.

### **3.2 Provide Clear and Reasonable Warning**

For Covered Products that create a daily dose of more than 0.5micrograms when taken as directed on the Product's label and as defined by the quality control methodology set forth in Exhibit B, Orange Peel shall provide the following warning:

**WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

The term "cancer" shall be included in the warning only if there is an exposure to a daily dose of more than 15 micrograms of lead when taken as directed on the Product's label and as defined by the quality control methodology set forth in Exhibit B.

In the event that this warning is required, the warning shall be prominently affixed to or printed upon the product's label of any the Covered Products so as to be clearly conspicuous, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product. If the warning is displayed on the product's label, the warning shall be at least the same size as the largest of any other health or safety warnings on the product and the word "warning" shall be in all capital letters and in bold print.

### 3.3 Testing

Commencing no later than thirty (30) days after the Notice of Entry of Judgment is served on Orange Peel, the company shall undertake testing of the Covered Products, as defined by the quality control methodology set forth in Exhibit B, to ensure that lead levels remain as low as practically feasible. The testing shall continue for so long as any of the Covered Products are sold in California or sold to a third party for retail sale in California. Orange Peel shall continue to test raw materials for lead against its current United States Food and Drug Administration Good Manufacturing Practice standards.

All testing pursuant to this Consent Judgment shall be performed by a laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United State Food & Drug Administration for the analysis of heavy metals. The laboratory shall follow the quality control methodology set forth in Exhibit B.

#### **IV. PAYMENT**

##### **4.1 Total Payment and Payment Schedule**

In full and final satisfaction of civil penalties, payment in lieu of civil penalties, ERC's costs of litigation and attorney's fees, Orange Peel shall make a total payment of \$80,000.00, payable to Michael Freund, Attorney-Client Trust Account. Sections 4.2-4.4 below describe the agreed partition of the \$80,000.00 total payment. The schedule for the payment of these funds shall be as follows: (a) an initial payment of \$20,000 within five (5) calendar days of the receipt of Notice of Entry of Judgment by electronic mail of this Consent Judgment. Subsequently, Orange Peel shall make six (6) successive monthly payments in the amount of 10,000.00 until the total payment of \$80,000.00 is satisfied. In the event that any payments owed under this Consent Judgment are not remitted on or before its due date, Orange Peel shall be deemed to be in default of its obligations under this Consent Judgment. ERC shall provide written notice to Orange Peel of any default; if Orange Peel fails to remedy the default within two (2) business days of such notice, then all future payments due hereunder shall become immediately due and payable, with interest accruing on unpaid balances due hereunder at 10% per annum pursuant to California Code of Civil Procedure Section 685.010 beginning on the due date of the funds in default.

##### **4.2 Civil Penalty**

Orange Peel agrees to pay a civil penalty in the amount of \$12,800.00 pursuant to Health & Safety Code Section 25249.7 (b) (1). Of this amount, Plaintiff shall remit 75% (\$9,600.00) to the Office of Environmental Health Hazard Assessment ("OEHHHA") with a copy of the transmittal correspondence to Orange Peel's counsel. The remaining payments shall be for the following:

#### **4.3 Payment in Lieu of Further Civil Penalties**

Orange Peel agrees to make an additional payment in lieu of further civil penalties in the amount of \$39,200.00 to ERC for projects and activities protecting people from exposures to toxic chemicals; researching and testing consumer products; increasing consumer, worker and community awareness of the health hazards posed by toxic chemicals; and protecting the environment; improving human health; and supporting environmentally sound practices.

#### **4.4 Reimbursement of Attorneys' Fees and Costs**

Orange Peel agrees to reimburse Plaintiff's reasonable investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement in the public interest in the amount of \$3,000.00.

Orange Peel further agrees to reimburse Plaintiff's attorneys' fees in the amount of \$20,000.00 to Michael Freund and \$5,000.00 payable to Karen Evans.

Orange Peel's payments shall be mailed to the Law Office of Michael Freund.

#### **V. RELEASE AND CLAIMS COVERED**

This Consent Judgment is a full, final and binding resolution between ERC and Orange Peel of any violation of Proposition 65 or its implementing regulations or any other statutory or common law claims that have been or could have been asserted in the Complaint for failure to provide clear and reasonable warnings of exposure to lead from the handling, use or consumption of the Covered Products or any other claim based on the facts or conduct alleged in the Complaint as to such products.

Furthermore, this Consent Judgment is a full, final and binding resolution between ERC, acting on behalf of the general public and in the public interest pursuant to Health & Safety Code

Section 25249.7 (d) and Orange Peel, of any violation of Proposition 65 or its implementing regulations for failure to provide clear and reasonable warnings of exposure to lead from the handling, use or consumption of the Covered Products,

Orange Peel waives any claims against ERC, its officers, directors, employees, agents, attorneys, and representatives ("the ERC Releasees") for all actions or statements made or undertaken by the ERC Releasees in the course of seeking enforcement of Proposition 65 in this Action. Compliance with all of the requirements of Section III constitutes compliance with Proposition 65 with respect to any obligation of Defendant to provide a warning as to the lead content of any Covered Product.

#### **VI. CONTINUING OBLIGATIONS**

Nothing herein shall be construed as diminishing Orange Peel's continuing obligations to comply with Proposition 65.

#### **VII. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

In the event that, after entry of this Consent Judgment in its entirety, any of the provisions hereof are subsequently held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

#### **VIII. ENFORCEMENT OF CONSENT JUDGMENT**

ERC may, by motion or as otherwise provided for enforcement of Judgments, seek relief from this Superior Court of the State of California to enforce the terms and conditions contained in this Consent Judgment after its entry by the Court.

#### **IX. APPLICATION OF CONSENT JUDGMENT**

This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the

benefit of Orange Peel, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, suppliers, manufacturers, successors and assigns, and upon ERC on its own behalf and on behalf of the general public and the public interest as specified in Paragraph V, as well as ERC's, employees, agents, successors, attorneys and assigns.

#### **X. MODIFICATION OF CONSENT JUDGMENT**

This Consent Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-noticed motion of any Party to the Consent Judgment as provided by law and upon entry of a modified Consent Judgment by the Court.

#### **XI. RETENTION OF JURISDICTION**

This Court shall retain jurisdiction of this matter to enforce, modify or terminate the Consent Judgment.

#### **XII. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

#### **XIII. COURT APPROVAL**

This Consent Judgment shall be effective only after it has been executed by the Court. Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

#### **XIV. EXECUTION IN COUNTERPARTS**

This Consent Judgment may be executed in counterparts and/or by facsimile, which taken



together shall be deemed to constitute one document.

## **XV. NOTICES**

All notices required to be given to either Party to this Consent Judgment by the other shall be sent to the following agents:

### **FOR ENVIRONMENTAL RESEARCH CENTER:**

Christian Heptinstall, Executive Director  
Environmental Research Center  
5694 Mission Center Road, # 199  
San Diego, CA 92108  
Michael Bruce Freund  
Law Offices of Michael Freund  
1915 Addison Street  
Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

Karen Evans  
Coordinating Counsel  
Environmental Research Center  
4218 Biona Place  
San Diego, CA 92116  
Telephone: (619) 640-8100

### **FOR ORANGE PEEL ENTERPRISES, INC. :**

Ryan Deauville, Vice President of Operations  
Orange Peel Enterprises, Inc.  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

Garrett Barten  
Christopher & Weisberg, P.A.  
200 East Las Olas Blvd., Suite 2040  
Fort Lauderdale, Florida 33301  
Telephone: (954) 828-1488  
Facsimile: (954) 828-9122

## **XVI. GOVERNING LAW**

The validity, construction and performance of this Consent Judgment shall be governed by

by the laws of the State of California.

#### **XVII. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against either Party.

#### **XVIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

In the event a dispute arises with respect to either party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

#### **XIX. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party

hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**XX. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT**

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

**IT IS SO STIPULATED:**

**ORANGE PEEL ENTERPRISES, INC.**

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Ryan Deauville, Vice President of Operations  
Orange Peel Enterprises, Inc.

**ENVIRONMENTAL RESEARCH CENTER**

Dated: 7/8, 2011

\_\_\_\_\_  
Christian Hepstinstall, Executive Director

hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**XX. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT**


This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

- (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and
- (2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

**IT IS SO STIPULATED:**

Dated: July 18, 2011

**ORANGE PEEL ENTERPRISES, INC.**



Ryan Deauville, Vice President of Operations  
Orange Peel Enterprises, Inc.

Dated: \_\_\_\_\_, 2011

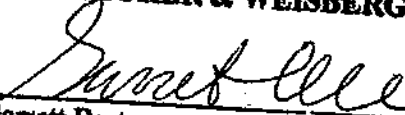
**ENVIRONMENTAL RESEARCH CENTER**

\_\_\_\_\_  
Christian Hepstinstall, Executive Director

**APPROVED AS TO FORM:**

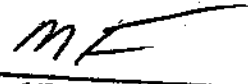
Dated: July 19, 2011

**CHRISTOPHER & WEISBERG, P.A.**

  
Garrett Barten  
Attorney for Orange Peel Enterprises, Inc.

Dated: July 19, 2011

**LAW OFFICE OF MICHAEL FREUND**

  
Michael Freund  
Attorney for Environmental Research Center

**IT IS SO ORDERED:**

Dated: 9-21, 2011

**CHARLOTTE WALTER WOOLARD**  
**JUDGE, SUPERIOR COURT**



**Environmental Research Center**

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

October 4, 2010

**VIA CERTIFIED MAIL**

Current CEO or President  
Orange Peel Enterprises, Inc.  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

Jude A. Deauville  
(Orange Peel Enterprises, Inc.'s Registered  
Agent for Service of Process)  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

**VIA PRIORITY MAIL**

District Attorneys of All 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 am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this Notice that violated Proposition 65 is:

**Orange Peel Enterprises, Inc.**

The product that is the subject of this Notice and the chemical in that product identified as exceeding allowable levels is:

**GreensPlus Wild Berry Burst – Lead**

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

October 4, 2010

Page 2

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 as chemical known to cause cancer.

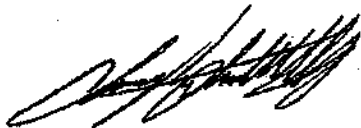
This letter is a Notice to Orange Peel Enterprises, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Orange Peel Enterprises, Inc. currently known to ERC from the information 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, has been provided to the Noticed Company with a copy of this letter.

Orange Peel Enterprises, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. 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's label. Orange Peel Enterprises, Inc. violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 Orange Peel Enterprises, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Orange Peel Enterprises, Inc., and its Registered Agent for Service of Process only)

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


**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Orange Peel Enterprises, Inc.**

I, Michael Freund, declare:

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

Dated: October 4, 2010



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Michael Freund  
Attorney for Environmental Research Center



**CERTIFICATE OF SERVICE**

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, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On October 4, 2010, 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 the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
Orange Peel Enterprises, Inc.  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

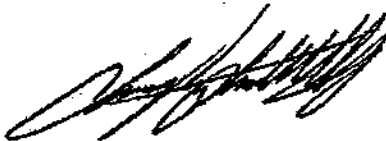
Jude A. Deauville  
(Orange Peel Enterprises, Inc.' Registered  
Agent for Service of Process)  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

On October 4, 2010, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On October 4, 2010, I served the following documents: **NOTICE OF VIOLATION, 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 for delivery by Priority Mail.

Executed on October 4, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

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

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

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

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

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

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

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

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

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

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

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

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, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

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

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

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

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

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

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

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

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
October 4, 2010

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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, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

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

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

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

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
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, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second 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, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

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

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

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

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

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

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



**Environmental Research Center**

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

October 22, 2010

**VIA CERTIFIED MAIL**

Current CEO or President  
Orange Peel Enterprises, Inc.  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

Jude A. Deauville  
(Orange Peel Enterprises, Inc.'s Registered  
Agent for Service of Process)  
2183 Ponce De Leon Circle  
Vero Beach, FL 32960

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

**VIA PRIORITY MAIL**

District Attorneys of All 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 am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

The name of the Company covered by this Notice that violated Proposition 65 is:

**Orange Peel Enterprises, Inc.**

October 22, 2010

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

**Orange Peel Enterprises Inc Greens Plus - The Original Superfood - Lead**  
**Orange Peel Enterprises Inc Greens Plus - Orange GreenSicle - Lead**  
**Orange Peel Enterprises Inc Greens Plus - Organic Superfood - 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 as chemical known to cause cancer.

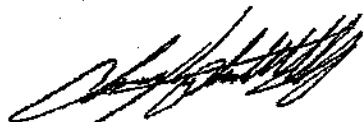
This letter is a Notice to Orange Peel Enterprises, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Orange Peel Enterprises, Inc. currently known to ERC from the information 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, has been provided to the Noticed Company with a copy of this letter.

Orange Peel Enterprises, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. 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's label. Orange Peel Enterprises, Inc. violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 Orange Peel Enterprises, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
October 22, 2010  
Page 3

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Orange Peel Enterprises, Inc., and its Registered Agent for Service of Process only)

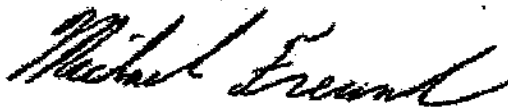
Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Orange Peel Enterprises, Inc.**

I, Michael Freund, declare:

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



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Michael Freund  
Attorney for Environmental Research Center

Dated: October 22, 2010

## Lead (Pb) Testing for California Prop 65 using ICPMS

### Introduction

This procedure is used to test solid samples for amounts of Pb. The sample is dissolved (or extracted) in a mineral acid digestion, spiked with internal standard ( $^{204}\text{Pb}$ ), and diluted to volume. The solutions are then analyzed by Inductively Coupled Plasma-Mass Spectrometry (ICPMS).

### Sample Preparation - Solids

Approximately 0.5 g of sample weighed to the nearest 0.01 g is digested in 10 mL of high purity nitric acid (Baker Ultrex or equivalent) at  $\sim 110^\circ\text{C}$  for 1 Hr. The digestion can be carried out on a HotBlock using virgin polypropylene digestion vessels to minimize contamination. If the sample contains significant organic material, cool the digestate and add 0.5 mL of 30% hydrogen peroxide and continue the digestion for  $\sim 30$  min or until the volume reduces to 2-3 mL. Cool the digestate and add 1000  $\mu\text{L}$  of 1  $\mu\text{g}/\text{mL}$   $^{204}\text{Pb}$  internal standard solution. Dilute to a final mass of  $\sim 100$  g and mix well. This represents a dilution factor of  $\sim 200$ , therefore a 10  $\mu\text{g}/\text{L}$  solution result is equivalent to a 2  $\mu\text{g}/\text{g}$  sample result.

### Sample Analysis

Analyze the solution using ICPMS according to the manufacturer's recommendations for tuning, etc. Calibration standards should cover the range of 1-100  $\mu\text{g}/\text{L}$  for Pb. Acquire data for all four naturally occurring isotopes 204-208. Calculate the results using the internal standard.

### Quality Control

For each batch of 20 or fewer samples, prepare at least one method blank. The background from the method blank should not exceed 0.1  $\mu\text{g}/\text{L}$  (equivalent to 0.02  $\mu\text{g}/\text{g}$  in the sample). For each batch of 20 or fewer samples also prepare at least one sample in duplicate and a sample spiked with Pb. Spiking a 0.5 g sample with 0.5  $\mu\text{g}$  (50  $\mu\text{L}$  of a 10  $\mu\text{g}/\text{mL}$  Pb solution) will prepare a 1  $\mu\text{g}/\text{g}$  spiked sample.

For each batch of samples prepare a Laboratory Control Standard (LCS) using NIST 1486, Bone Meal (Certified Value  $\sim 1.3$   $\mu\text{g}/\text{g}$ .) The results for this QC sample should be within 20% of the certified value; typically the result is within 7%.

Within each ICPMS instrument run, the calibration should consist of at least 3 calibration standards (1, 10, and 100  $\mu\text{g}/\text{L}$ ) as well as a calibration blank. If the 1st order least squares regression  $> 0.995$ , the midpoint standard may be used for calculating all results rather than the regression equation. Typically the regression fit is  $> 0.999$ .

After calibration, analyze a Laboratory Control Standard solution such as NIST SRM 1640 Trace Metals in Water or similar solution with a Pb concentration in the range of 10-100  $\mu\text{g}/\text{L}$ . The result should be within 7% of the certified value to confirm that the calibration standards were made correctly. Typically the result is within 5%.

Once the calibration is confirmed, analyze samples and blanks. After every 10 or fewer samples, repeat the calibration blank and the midpoint calibration standard. Calibration should not drift by more than 6%. One may recalibrate on the continuing standards as long as the drift is  $< 6\%$  between standards (typically  $< 2\%$ ).

For any sample results  $> 10\text{X}$  the method blank background, the results from duplicate sample aliquots should agree within 25%. For spikes greater than the sample concentration, the % recovery should be 80-120% (typically 94-106%).

Dilute and reanalyze any solution with a concentration outside the calibration range.