



RICHARD DRURY (CBN 163559)  
REBECCA L. DAVIS (CBN 271662)  
LOZEAU | DRURY LLP  
410 12<sup>th</sup> Street, Suite 250  
Oakland, CA 94607  
Ph: 510-836-4200  
Fax: 510-836-4205  
Email: richard@lozeaudrury.com  
rebecca@lozeaudrury.com

Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER, INC.

WILLIAM TARANTINO (CBN 215343)  
MORRISON & FOERSTER LLP  
425 MARKET STREET  
SAN FRANCISCO, CA 94105  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

Attorney for Defendants  
IOVATE HEALTH SCIENCES U.S.A. INC. and  
IOVATE HEALTH SCIENCES  
INTERNATIONAL INC.

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

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

Plaintiff,

v.

IOVATE HEALTH SCIENCES U.S.A. INC.,  
a Delaware corporation, and IOVATE  
HEALTH SCIENCES INTERNATIONAL  
INC., a Canadian corporation,

Defendants.

CASE NO. RG16838524

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 10, 2016

Trial Date: None set

**FILED**  
**ALAMEDA COUNTY**

**MAY 02 2018**

**CLERK OF THE SUPERIOR COURT**

By [Signature] Deputy

1 **1. INTRODUCTION**

2 **1.1** On November 10, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"),  
3 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive Relief and Civil Penalties pursuant to the provisions of  
5 California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against IOVATE  
6 HEALTH SCIENCES U.S.A. INC. and IOVATE HEALTH SCIENCES INTERNATIONAL  
7 INC (collectively "IOVATE"). The Parties will file a Stipulation and [Proposed] Order  
8 Allowing Plaintiff to File First Amended Complaint to include additional noticed products  
9 concurrently with the filing of a Motion to Approve this Stipulated Consent Judgment. ERC  
10 will file an Amended Complaint ("the Complaint") upon judicial approval of the Parties'  
11 Stipulation and [Proposed] Order Allowing Plaintiff to File First Amended Complaint. ERC  
12 and IOVATE are hereinafter referred to individually as a "Party" or collectively as the  
13 "Parties."

14 **1.2** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
15 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
16 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
17 and encouraging corporate responsibility. ERC has diligently prosecuted this matter and is  
18 settling the case in the public interest.

19 **1.3** Each defendant is a business entity each of which has employed ten or more  
20 persons at all times relevant to this action, and qualifies as a "person in the course of business"  
21 within the meaning of Proposition 65.

22 **1.4** The Complaint will be based on allegations contained in ERC's Notices of  
23 Violation dated February 19, 2016, October 31, 2017, November 3, 2017, November 9, 2017,  
24 and November 10, 2017 that were served on the California Attorney General, other public  
25 enforcers, and IOVATE ("Notices"). A true and correct copy of the 60-Day Notices dated  
26 February 19, 2016, October 31, 2017, November 3, 2017, November 9, 2017, and November  
27 10, 2017 are attached hereto as Exhibits A, B, C, D, and E and are incorporated herein by  
28 reference. The products identified in the Notices of Violation ("Covered Products") are

1 attached hereto as Exhibit F.

2 At the time of the hearing on the Motion to Approve, more than 60 days will have  
3 passed since the Notices were served on the Attorney General, public enforcers, and IOVATE.

4 **1.5** ERC's Notices and Complaint allege that use of the Covered Products has  
5 exposed and continues to expose persons in California to lead and cadmium (the "Listed  
6 Chemicals") without first providing clear and reasonable warnings in violation of California  
7 Health and Safety Code section 25249.6. IOVATE denies all material allegations contained in  
8 the Notices and Complaint, asserts numerous affirmative defenses to the allegations of  
9 violations, and specifically denies the Covered Products required a Proposition 65 warning or  
10 otherwise cause harm to any person.

11 **1.6** The Parties have entered into this Consent Judgment in order to settle,  
12 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.

13 **1.7** Nothing in this Consent Judgment shall constitute or be construed as an  
14 admission by any of the Parties, of any fact, issue of law, or violation of law at any time, for any  
15 purpose. Nothing in this Consent Judgment shall be construed as giving rise to any  
16 presumption or inference of admission or concession or waiver of any defense by the Parties as  
17 to any fault, wrongdoing or liability, including without limitations, any alleged violation of  
18 Proposition 65.

19 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
20 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
21 current or future legal proceeding unrelated to these proceedings. This paragraph shall not  
22 diminish or otherwise affect the obligations, responsibilities, and duties of any Party with  
23 respect to this Consent Judgment.

24 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as  
25 a Judgment by this Court.

26 **1.10** The only products covered by this Consent Judgment are the Covered  
27 Products, and the only chemicals covered by this Consent Judgment are the Listed Chemicals  
28 as related to the Covered Products only.

1   **2.     JURISDICTION AND VENUE**

2           For purposes of this Consent Judgment only, the Parties stipulate that this Court has subject  
3   matter jurisdiction over the allegations of violations contained in the Complaint, personal  
4   jurisdiction over IOVATE as to the acts alleged in the Complaint, that venue is proper in Alameda  
5   County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
6   resolution of all claims up through and including the Effective Date that were or could have been  
7   asserted in this action based on the facts alleged in the Notices and Complaint.

8   **3.     INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

9           **3.1**     Beginning on the Effective Date, IOVATE shall be permanently enjoined from  
10   manufacturing or causing to be manufactured for sale in the State of California, Distributing  
11   into the State of California, or directly selling in the State of California, any Covered Products  
12   which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead  
13   and 4.1 micrograms of cadmium (“Daily Cadmium Exposure Level”) per day unless it complies  
14   with the following Reformulation Standard:

15           **3.1.1**   For each of the Covered Products, the Reformulation Standard requires  
16   the Covered Products to expose a person to a “Daily Lead Exposure Level” of no more than 0.5  
17   micrograms of lead, after subtracting out the amount of lead deemed “naturally occurring” for  
18   each ingredient listed in Table 3.2 and a “Daily Cadmium Exposure Level” of 4.1 micrograms  
19   of cadmium.

20           **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure Level”  
21   and the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be  
22   calculated using the following formula: micrograms of lead or cadmium per gram of product,  
23   multiplied by grams of product per Serving of the product, which equals micrograms of lead or  
24   cadmium exposure per day, but excluding lead which is deemed “Naturally Occurring” for  
25   purposes of this Consent Judgment only. For purposes of this Consent Judgment, a Serving is  
26   that amount each of the Covered Products as set forth on the label instructions listed on Exhibit  
27   F.

28           **3.1.3**   For purposes of this Consent Judgment, “Distributing into California”

1 means to ship any of the Covered Products into California for sale in California or to sell or  
2 provide any of the Covered Products to any person or entity IOVATE knows intends to or will  
3 sell any of the Covered Products into or sell any of the Covered Product to a consumer in  
4 California.

### 5           **3.2      Calculation of Lead and Cadmium Content**

6           For purposes of this Consent Judgment, the “Daily Lead Exposure Level” and the “Daily  
7 Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the  
8 following formula: micrograms of lead or cadmium per gram of product, multiplied by grams of  
9 product per serving of the product, which equals micrograms of lead or cadmium exposure per  
10 day, but excluding lead which is deemed “Naturally Occurring” for purposes of this Consent  
11 Judgment only. The serving size of each of the Covered Products as set forth on the label  
12 instructions is listed on Exhibit F.

13           For Purposes of Section 3.1 above, and for purposes of this Consent Judgment only, the  
14 amount of lead content deemed “naturally occurring” in each of the Covered Products is the  
15 sum of the amounts of “naturally occurring” lead from each ingredient listed in Table 3.2 that is  
16 present in a Serving of the Covered Product.

17           Applicable exemptions shall be calculated by multiplying the exemption concentrations  
18 referenced above by the number of the grams of the ingredient subject to the exemption.

19           If IOVATE seeks to exclude “naturally occurring” amounts of lead under this Section  
20 3.2 for any of the Covered Products, IOVATE shall provide to ERC, under the terms of the  
21 confidentiality agreement entered into by the Parties and prior to the Effective Date, a separate  
22 document to include a complete list of all ingredients listed in Table 3.2 in each such Covered  
23 Product and the quantity in grams of each of those ingredients in a Serving of the Covered  
24 Products.

25           **Table 3.2**

Ingredient	Amount of Lead per Gram of Ingredient Deemed Naturally Occurring for Purposes of this Consent Judgment Only
------------	---

1	Calcium (elemental)	0.8 micrograms per gram (µg/g)
2	Ferrous fumarate	0.4 µg/g
3	Zinc oxide	8.0 µg/g
4	Magnesium oxide	0.4 µg/g
5	Magnesium carbonate	0.332 µg/g
6	Magnesium hydroxide	0.4 µg/g
7	Zinc gluconate	0.8 µg/g
8	Potassium chloride	1.1 µg/g
9	Cocoa powder	1.0 µg/g
10	Chocolate liquor	1.0 µg/g
11	Cocoa butter	0.1 µg/g

### 3.3 Testing and Quality Control Methodology

3.3.1 Beginning within one year of the Effective Date, and continuing for a period of two (2) years thereafter, at least once a year, IOVATE shall have one (1) randomly selected sample (in the form intended for sale to the end-user) from two randomly selected lots of each Covered Product subject to the Reformulation Requirement tested for lead and cadmium content. The term "lot" as used herein, means a manufacturing cycle or series of manufacturing cycles producing Covered Products that are designed with the same date code. Each sample to be tested shall be randomly selected, and shall be identified in IOVATE's request to the laboratory for testing as being submitted pursuant to this Consent Judgment. For each Covered Product, the highest lead and cadmium content testing results of the two (2) randomly selected and tested samples shall be used for calculating the lead and cadmium exposure level for that Covered Product as set forth in Section 3.2 above, unless the two results are the same, in which case, the single lead or cadmium content test results shall be used for calculating the lead or cadmium exposure level for that Covered Product as set for in Section 3.2 above. If, for whatever reason, the highest lead or cadmium content test reflects an exposure in excess of the Reformulation Standard, IOVATE has the right to retest three samples from the same lot. The highest lead or cadmium content testing results from each lot that is retested for the second

1 round of sampling shall be used for calculating the lead or cadmium exposure level for that  
2 Covered Product.

3           **3.3.2** All testing pursuant to this Consent Judgment shall be performed using a  
4 laboratory method that complies with the performance and quality control factors appropriate  
5 for the method used, including limit of detection, qualification, accuracy, and precision that  
6 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
7 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
8 method subsequently agreed to in writing by the Parties and approved by the Court through  
9 entry of a modified consent judgment.

10           **3.3.3** All testing pursuant to this Consent Judgment shall be performed by an  
11 independent third party laboratory certified by the California Environmental Laboratory  
12 Accreditation Program or an independent third-party laboratory that is registered with the  
13 United States Food & Drug Administration. IOVATE shall also retain all test results required  
14 by this Section 3 for a period of five years from the date of the test.

15           **3.3.4** Nothing in this Consent Judgment shall limit IOVATE's ability to  
16 conduct, or require that others conduct, additional testing of the Covered Products, including the  
17 raw materials used in their manufacture.

18           **3.3.5** Nothing in this Consent Judgment shall require IOVATE to conduct lead  
19 or cadmium testing of any Covered Product that is no longer Distributed into California, as that  
20 term is defined in Section 3.1.3, by IOVATE.

21           **3.3.6** The testing and sampling methodology set forth in Section 3.3 is a result  
22 of negotiation and compromise, and is accepted by the Parties for the purposes of settling,  
23 compromising, and resolving the issues in this action, including future compliance with Section  
24 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except  
25 for the purposes of determining future compliance with this Consent Judgment.

26 **4. SETTLEMENT PAYMENT**

27           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
28 attorney's fees, and costs, IOVATE shall make a total payment of \$625,000.00 ("Total

Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). IOVATE shall make this payment by wire transfer to ERC’s escrow account, for which ERC will give IOVATE the necessary account information. The Total Settlement Amount shall be apportioned as follows:

**4.2** \$186,725.64 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$140,044.23) of the civil penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$46,681.41) of the civil penalty.

**4.3** \$35,580.63 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

**4.4** \$140,043.99 shall be distributed to ERC as an Additional Settlement Payment (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

Based on a review of past years’ actual budgets, ERC is providing the following list of activities ERC engages in to protect California consumers through Proposition 65 citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary supplement products that may contain lead and/or cadmium and are sold to California consumers. This work includes continued monitoring and enforcement of past consent



1 judgments and settlements to ensure companies are in compliance with their obligations  
2 thereunder, with a specific focus on those judgments and settlements concerning lead and/or  
3 cadmium. This work also includes investigation of new companies from which ERC does not  
4 obtain any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE  
5 PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring  
6 products from companies, developing and maintaining a case file, testing products from these  
7 companies, providing the test results and supporting documentation to the companies, and  
8 offering guidance in warning or implementing a self-testing program for lead and/or cadmium in  
9 dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's  
10 "Got Lead?" Program which reduces the numbers of contaminated products that reach California  
11 consumers by providing access to free testing for lead in dietary supplement products (products  
12 submitted to the program are screened for ingredients which are suspected to be contaminated,  
13 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the  
14 results shared with the consumer that submitted the product).

15 ERC shall be fully accountable in that it will maintain adequate records to document and  
16 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are  
17 being spent only for the proper, designated purposes described in this Consent Judgment. ERC  
18 shall provide the Attorney General, within thirty days of any request, copies of documentation  
19 demonstrating how such funds have been spent.

20 **4.5** \$124,022.04 shall be distributed to Lozeau Drury LLP as reimbursement of  
21 ERC's attorney's fees, while \$138,627.70 shall be distributed to ERC for its in-house legal fees.  
22 Except as explicitly provided herein, each Party shall bear its own fees and costs.

23 **4.6** In the event that IOVATE fails to remit the Total Settlement Payment owed  
24 under Section 4 of this Consent Judgment on or before the Due Date, IOVATE shall be deemed  
25 to be in material breach of its obligations under this Consent Judgment. ERC shall provide  
26 written notice of the delinquency to IOVATE via electronic mail. If IOVATE fails to deliver  
27 the Total Settlement Payment within five (5) days from the written notice, the Total Settlement  
28 Payment shall accrue interest at the statutory judgment interest rate provided in the California

Code of Civil Procedure section 685.010. Additionally, IOVATE agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this Consent Judgment.

**5. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

**5.1** This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and IOVATE and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of IOVATE), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead and cadmium up to and including the Effective Date.

**5.2** ERC on its own behalf only, and IOVATE on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices and Complaint up through and including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

**5.3** It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be discovered. ERC on behalf of itself only, and IOVATE on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. ERC and

1 IOVATE acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
2 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
3 unknown claims. California Civil Code section 1542 reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
6 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
7 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
8 THE DEBTOR.

9 ERC on behalf of itself only, and IOVATE on behalf of itself only, acknowledge and  
10 understand the significance and consequences of this specific waiver of California Civil Code  
11 section 1542.

12 **5.4** Compliance with the terms of this Consent Judgment shall be deemed to  
13 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
14 and cadmium in the Covered Products as set forth in the Notices and Complaint.

15 **5.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
16 environmental exposures arising under Proposition 65, nor shall it apply to any of IOVATE's  
17 products other than the Covered Products.

## 18 **6. MOTION FOR COURT APPROVAL**

19 **6.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice,  
20 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California  
21 Code of Regulations §3000, *et seq.* This motion shall be served upon IOVATE and upon the  
22 California Attorney General's Office. IOVATE and ERC shall use their best efforts to support  
23 entry of this Consent Judgment in the form submitted to the Court for approval.

24 **6.2** If, after service of the Motion for Approval & Entry of Consent Judgment, the  
25 California Attorney General objects in writing to any term in this Consent Judgment or files any  
26 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely  
27 manner prior to the hearing on the motion.

28 **6.3** This Consent Judgment shall be effective only after it has been entered by the

1 court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for  
2 any purpose.

3 **7. RETENTION OF JURISDICTION**

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

6 **8. MODIFICATION OF CONSENT JUDGMENT**

7 This Consent Judgment after its entry by the Court may be modified only upon written  
8 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

9 In the event of an agreed upon modification requested by IOVATE, IOVATE shall reimburse  
10 ERC its reasonable attorneys' fees and costs associated with a joint motion or application to the  
11 Court in support of the agreed upon modification of the Consent Judgment.

12 **9. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**  
13 **RESOLVE DISPUTES**

14 If a dispute arises with respect to either Party's compliance with the terms and/or  
15 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of  
16 another Party shall make a good faith attempt to resolve the dispute by conferring with the other  
17 Party in person, by telephone, or by written communication before seeking relief from the Court.

18 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

22 **11. GOVERNING LAW**

23 The terms and conditions of this Consent Judgment shall be governed by and construed in  
24 accordance with the laws of the State of California.

25 **12. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
28 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
5 equally in the preparation and drafting of this Consent Judgment.

6 **13. ENTIRE AGREEMENT, AUTHORIZATION**

7 This Consent Judgment contains the sole and entire agreement and understanding of the  
8 Parties with respect to the entire subject matter herein, and any and all prior discussions,  
9 negotiations, commitments, and understandings related hereto. No representations, oral or  
10 otherwise, express or implied, other than those contained herein have been made by any Party.  
11 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to  
12 exist or to bind any Party.

13 **14. EXECUTION AND COUNTERPARTS**

14 This Consent Judgment may be executed in counterparts, which taken together shall be  
15 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
16 as the original signature.

17 **15. APPLICATION OF CONSENT JUDGMENT**

18 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
19 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
20 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
21 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
22 application to Covered Products which are distributed or sold exclusively outside the State of  
23 California.

24 **16. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this Consent Judgment by the other shall  
26 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
27 email may also be sent.

1 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

2 Chris Heptinstall, Executive Director, Environmental Research Center  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Tel: (619) 500-3090  
6 Email: chris\_erc501c3@yahoo.com

7 With a copy to:

8 RICHARD DRURY  
9 REBECCA L. DAVIS  
10 LOZEAU | DRURY LLP  
11 410 12<sup>th</sup> Street, Suite 250  
12 Oakland, CA 94607  
13 Ph: 510-836-4200

14 Email: richard@lozeaudrury.com  
15 rebecca@lozeaudrury.com

16 **IOVATE HEALTH SCIENCES U.S.A. INC. and**  
17 **IOVATE HEALTH SCIENCES INTERNATIONAL INC.**

18 Roch Vaillancourt B.Sc., LL.L.  
19 Chief Legal Officer & General Counsel  
20 Iovate Health Sciences International Inc.  
21 381 North Service Road West  
22 Oakville, ON Canada L6M 0H4  
23 Phone: 905.290.4361  
24 Email: roch.vaillancourt@iovate.com

25 With a copy to:

26 William F. Tarantino  
27 Morrison & Foerster LLP  
28 425 Market St., Suite 3200  
San Francisco, CA 94105  
Phone: (415) 268-7000  
Email: WTarantino@mofo.com

17. **AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

Each person signing this Consent Judgment on behalf of a Party certifies that he or she is fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party, and to legally bind that Party to this Consent Judgment. Each person signing this Consent Judgment on behalf of a Party represents and warrants that he or she has read and understands

1 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment  
2 on behalf of that Party.

3 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
4 **CONSENT JUDGMENT**

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

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

11 (2) Make the findings pursuant to California Health and Safety Code section  
12 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

13  
14 **IT IS SO STIPULATED:**

15 Dated: \_\_\_\_\_, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

17 By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

19  
20 Dated: December 22, 2017

IOVATE HEALTH SCIENCES U.S.A. INC.

21 

22 By: Roch Vaillancourt  
Its: Chief Legal Officer

23  
24 Dated: December 22, 2017

IOVATE HEALTH SCIENCES  
INTERNATIONAL INC.

25 

26 By: Roch Vaillancourt  
27 Its: Chief Legal Officer  
28

1 **APPROVED AS TO FORM:**

2 Dated: \_\_\_\_\_, 2017

LOZEAU | DRURY LLP

3 By: \_\_\_\_\_

4 Rebecca L. Davis  
5 Attorneys for Plaintiff Environmental  
6 Research Center, Inc.

7 Dated: December 22, 2017

MORRISON & FOERSTER LLP

8   
9 By: \_\_\_\_\_

10 William F. Tarantino  
11 Attorney for Defendants Iovate Health  
12 Sciences U.S.A. Inc. and Iovate Health  
13 Sciences International Inc.

13 **ORDER AND JUDGMENT**

14 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
15 approved and Judgment is hereby entered according to its terms.

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17  
18 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Judge of the Superior Court



Judgment on behalf of a Party represents and warrants that he or she has read and understands this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on behalf of that Party.

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

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment 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 California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

**IT IS SO STIPULATED:**

Dated: 12/15/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heptinstall, Executive Director

Dated: \_\_\_\_\_, 2017

IOVATE HEALTH SCIENCES U.S.A. INC.

By: Roch Vaillancourt  
Its: Chief Legal Officer

1 Dated: \_\_\_\_\_, 2017

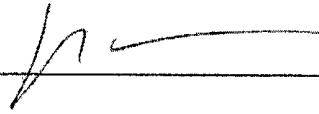
IOVATE HEALTH SCIENCES  
INTERNATIONAL INC.

By: Roch Vaillancourt  
Its: Chief Legal Officer

5 **APPROVED AS TO FORM:**

6 Dated: Dec 15, 2017

LOZEAU | DRURY LLP

By:   
Rebecca L. Davis  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

11 Dated: \_\_\_\_\_, 2017

MORRISON & FOERSTER LLP

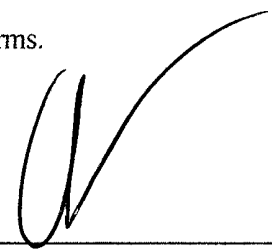
By: \_\_\_\_\_  
William F. Tarantino  
Attorney for Defendants Iovate Health  
Sciences U.S.A. Inc. and Iovate Health  
Sciences International Inc.

17 **ORDER AND JUDGMENT**

18 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
19 approved and Judgment is hereby entered according to its terms.

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: 3/2, 2018

  
\_\_\_\_\_  
Judge of the Superior Court

# EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

Wilmington Trust SP Services, Inc.  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1105 North Market Street, Suite 1300  
Wilmington, DE 19801

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA CERTIFIED MAIL**

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

**VIA ELECTRONIC MAIL**

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

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

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

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

**VIA ELECTRONIC MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA PRIORITY MAIL**

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

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

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

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of

hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Iovate Health Sciences U.S.A. Inc.**  
**Iovate Health Sciences International Inc.**

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

1. **Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Mixed Berry - Lead**
2. **Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Vanilla - Lead**
3. **Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Chocolate - Lead**
4. **Iovate Health Sciences U.S.A. Inc. Epiq Gainer Milk Chocolate - Lead**
5. **Iovate Health Sciences U.S.A. Inc. Hydroxycut Appetite Control Plus Appethyl Mixed Berry Smoothie - Lead**
6. **Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Caffeine Free - Lead**
7. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Mass Tech Milk Chocolate - Lead**
8. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anabolic Halo Chocolate - Lead**
9. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Fruit Punch - Lead**
10. **Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Blue Raspberry - Lead**
11. **Iovate Health Sciences U.S.A. Inc. Hydroxycut Lean Protein Chocolate Fudge - Lead**
12. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Gourmet Milk Chocolate - Lead**
13. **Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Vanilla - Lead**
14. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Gourmet Milk Chocolate - Lead**
15. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Vanilla Ice Cream - Lead**
16. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Strawberry Shortcake - Lead**
17. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Vanilla Caramel - Lead**
18. **Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum Iso-Zero Unflavored - Lead**

19. Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Double Dutch Chocolate - Lead
20. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Peanut Butter Chocolate - Lead
21. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 White Chocolate - Lead
22. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Cookies and Cream - Lead
23. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Strawberry - Lead
24. Iovate Health Sciences U.S.A. Inc. Purely Inspired Garcinia Cambogia+ - Lead
25. Iovate Health Sciences U.S.A. Inc. Purely Inspired Raspberry Ketones+ - Lead
26. Iovate Health Sciences U.S.A. Inc. Purely Inspired Garcinia Cambogia+ Cherry Natural Flavors Gummies - Lead
27. Iovate Health Sciences U.S.A. Inc. Purely Inspired Konjac Root+ - Lead
28. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Milk Chocolate - Lead
29. Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum Garcinia+Plus - Lead
30. Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Vanilla Ice Cream - Lead
31. Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Fruit Punch Blast - Lead
32. Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Watermelon - Lead
33. Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Blue Raspberry - Lead
34. Iovate Health Sciences U.S.A. Inc. Xenadrine 7X More Weight Loss Than Dieting Alone - Lead
35. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Pink Lemonade - Lead
36. Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Watermelon - Lead
37. Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Creamy Vanilla - Lead
38. Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake French Vanilla - Lead
39. Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake Very Berry - Lead
40. Iovate Health Sciences U.S.A. Inc. MuscleTech GAKIC VO2 Max SX-7 - Lead
41. Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Fruit Punch Fusion - Lead
42. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit Lean Protein Rich Chocolate - Lead
43. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Pre-Workout Explosion Fruit Punch - Lead
44. Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Max! For Women - Lead

45. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Isolate+ Plus Elite Series French Vanilla - Lead
46. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Casein Protein Elite Series Triple Chocolate - Lead
47. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Isolate+ Plus Elite Series Decadent Chocolate - Lead
48. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Triple Chocolate - Lead
49. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Vanilla Cream - Lead
50. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Cookies & Cream - Lead
51. Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Instant Protein Smoothie Mixed Berry - Lead
52. Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Cookies & Cream Cake Batter Flavor - Lead
53. Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Rich Vanilla Flavor - Lead
54. Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Chocolate Brownie Flavor - Lead
55. Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Rich Chocolate Flavor - Lead
56. Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Vanilla Caramel Flavor - Lead
57. Iovate Health Sciences U.S.A. Inc. Fuel:One Complex-1 Chocolate Brownie Flavor - Lead
58. Iovate Health Sciences U.S.A. Inc. Fuel:One Micellar Whey Build Chocolate Fudge Flavor - Lead
59. Iovate Health Sciences U.S.A. Inc. Fuel:One Thermo Stack - Lead
60. Iovate Health Sciences U.S.A. Inc. Epiq Isolate Milk Chocolate - Lead
61. Iovate Health Sciences U.S.A. Inc. Epiq Isolate Rich Vanilla - Lead
62. Iovate Health Sciences U.S.A. Inc. Epiq 3x Lean Muscle - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.



The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead 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 lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 19, 2013, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)

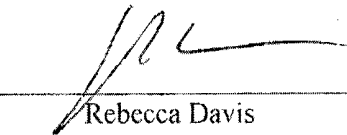
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences  
International Inc.**

I, Rebecca Davis, declare:

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

Dated: February 19, 2016

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

**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. 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 February 19, 2016, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

Wilmington Trust SP Services, Inc.  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1105 North Market Street, Suite 1300  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

On February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
February 19, 2016  
Page 9

on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

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

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

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

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

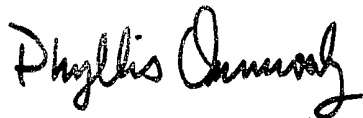
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

On February 19, 2016, 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 Priority Mail.

Executed on February 19, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

February 19, 2016

Page 10

Service List

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Imperial  
County  
940 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, Los  
Angeles County  
210 West Temple Street,  
Suite 18000  
Los Angeles, CA 90012

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

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

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

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

District Attorney, Merced  
County  
550 W. Main 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, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

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

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

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

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

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

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

District Attorney, San  
Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

District Attorney, San Luis  
Obispo County  
1035 Palm St. Room 450  
San Luis Obispo, CA 93408

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

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

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

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

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

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

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

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

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

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

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

## 27 CCR Appendix A

### 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. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable.” This means that the warning must: (1) clearly say 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 Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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

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

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

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

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

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

#### ***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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

The notice is reproduced here:

Page 1

Date: February 19, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

☐ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

☐ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

☐ 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.

☐ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: February 19, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.,  
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108  
Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- ☐ Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- ☐ Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- ☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

---

Signature of alleged violator or authorized representative Date

---

Name and title of signatory

**FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .**

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

Revised: May 2014

---

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

<sup>2</sup> See Section 25501(a)(4).

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.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A

# EXHIBIT B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA CERTIFIED MAIL**

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

October 31, 2017

Page 2

**VIA ELECTRONIC MAIL**

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

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

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

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

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

**VIA ELECTRONIC MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

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

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

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Iovate Health Sciences U.S.A. Inc.**  
**Iovate Health Sciences International Inc.**

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

1. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Isolate+ Plus Elite Series Decadent Chocolate - Lead**
2. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Vanilla Cream - Lead**
3. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Triple Chocolate - Lead**
4. **Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based Nutritional Shake French Vanilla - Lead**
5. **Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Brownie - Lead**
6. **Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Birthday Cake - Lead**
7. **Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Triple Chocolate – Lead, Cadmium**
8. **Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Chip Cookie Dough - Lead**
9. **Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Cookies & Cream - Lead**
10. **Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Chocolate Peanut Butter - Lead**
11. **Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Decadent Chocolate - Lead**
12. **Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Vanilla Ice Cream - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.



October 31, 2017

Page 4

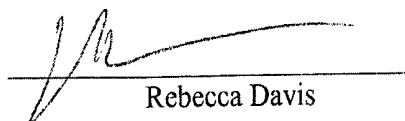
This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since October 31, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)

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

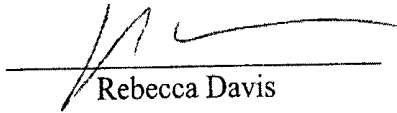
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences  
International Inc.**

I, Rebecca Davis, declare:

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

Dated: October 31, 2017

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

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

On October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

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

October 31, 2017

Page 7

On October 31, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

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

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

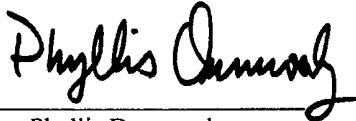
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 31, 2017

Page 8

On October 31, 2017 between 10:00 a.m. and 4:30 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 31, 2017, in Fort Oglethorpe, Georgia.

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

Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Merced  
County  
550 W. Main 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, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

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

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

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

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

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92401

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

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

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

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

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

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

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

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

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

---

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

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

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

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

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

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



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

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

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

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

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

---

<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# EXHIBIT C

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA CERTIFIED MAIL**

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

**VIA ELECTRONIC MAIL**

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

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

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

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

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

**VIA ELECTRONIC MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

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

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

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Iovate Health Sciences U.S.A. Inc.**  
**Iovate Health Sciences International Inc.**

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

1. **Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Pure 7-Day Cleanse With Active Probiotics - Lead**
2. **Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based Nutritional Shake Decadent Chocolate - Lead**
3. **Iovate Health Sciences U.S.A. Inc. True Grit Test Booster - Lead**
4. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Strawberry Smoothie - Lead**
5. **Iovate Health Sciences U.S.A. Inc. Epiq Quad Test - Lead**
6. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit 100% Protein Isolate French Vanilla - Lead**
7. **Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Raspberry Lemonade - Lead**
8. **Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Cherry Limeade Twist - Lead**
9. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper-Build Extreme Fruit Punch - Lead**
10. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Complete Recovery Protein Elite Series Decadent Chocolate - Lead, Cadmium**
11. **Iovate Health Sciences U.S.A. Inc. MuscleTech Premium 100% Whey Protein+ Plus Deluxe Vanilla - Lead**
12. **Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Chewy & Delicious Protein Elite Series Peanut Butter Chocolate - Lead**
13. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Test HD Hardcore Testosterone Booster - Lead**
14. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Milk Chocolate - Lead**
15. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Cookies and Cream - Lead**
16. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Strawberry - Lead**
17. **Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Vanilla - Lead**
18. **Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Strawberry - Lead**

19. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Café Blended Coffee Whey Protein Shake- Lead
20. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Hazelnut - Lead
21. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost French Vanilla - Lead
22. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Caramel - Lead
23. Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Strawberry Cheesecake - Lead
24. Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Chocolate Chip - Lead
25. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey +Greens Vanilla - Lead
26. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey +Greens Milk Chocolate - Lead
27. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Creamy Vanilla - Lead
28. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Vanilla Bean - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since November 3, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.



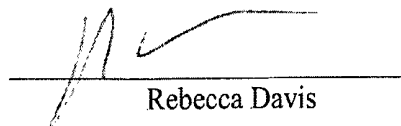
November 3, 2017

Page 5

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)

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

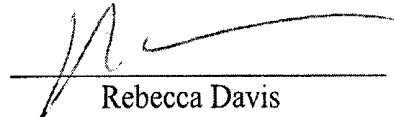
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences  
International Inc.**

I, Rebecca Davis, declare:

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

Dated: November 3, 2017

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

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

On November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On November 3, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

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

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

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

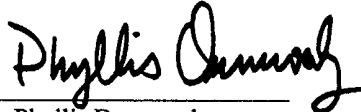
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
November 3, 2017  
Page 9

On November 3, 2017 between 10:00 a.m. and 4:30 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 November 3, 2017, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Merced  
County  
550 W. Main 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, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

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

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

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

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

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92401

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

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

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

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

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

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

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

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

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

---

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

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

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

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

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

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



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

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

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

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

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

---

<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:

<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# EXHIBIT D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA CERTIFIED MAIL**

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA ELECTRONIC MAIL**

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

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

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

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

**VIA ELECTRONIC MAIL**

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

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

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

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

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

**VIA ELECTRONIC MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

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

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

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Iovate Health Sciences U.S.A. Inc.  
Iovate Health Sciences International Inc.**

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

1. **Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Peanut Butter - Lead**
2. **Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Chip Cookie Dough - Lead**
3. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Strawberry - Lead**
4. **Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso-Whey Peanut Butter Chocolate Twist - Lead**
5. **Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso-Whey Strawberry Shortcake - Lead**
6. **Iovate Health Sciences U.S.A. Inc. True Grit Protein Strawberry Cream - Lead**
7. **Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate French Vanilla - Lead**
8. **Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate Double Rich Chocolate - Lead**
9. **Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series PRE Build Sugar Free Gummy Worm - Lead**
10. **Iovate Health Sciences U.S.A. Inc. True Grit Protein Cookies & Cream - Lead**
11. **Iovate Health Sciences U.S.A. Inc. True Grit Protein Vanilla Ice Cream - Lead**
12. **Iovate Health Sciences U.S.A. Inc. Hydroxycut Platinum Weight Loss Plus Probiotics & Vitamins - Lead**
13. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped French Vanilla Swirl - Lead**

14. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Fruit Punch - Lead
15. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Icy Rocket Freeze - Lead
16. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Whey Vanilla Cupcake - Lead
17. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Amino Build Next Gen Ripped Peach Mango - Lead
18. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper-Build Blue Raspberry Blast - Lead
19. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Candy Watermelon - Lead
20. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Icy Rocket Freeze - Lead
21. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Strawberry Limeade - Lead
22. Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Sport SX-7 Black Onyx Elite Performance Multivitamin for Women - Lead
23. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Grape - Lead
24. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Double Rich Chocolate - Lead
25. Iovate Health Sciences U.S.A. Inc. MuscleTech Garcinia 4X SX-7 Quad Sourced Stim-Free - Lead
26. Iovate Health Sciences U.S.A. Inc. MuscleTech L-Arginine SX-7 Black Onyx Icy Rocket Freeze - Lead
27. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Fruit Punch Blast - Lead
28. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Icy Rocket Freeze - Lead
29. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Blue Raspberry Fusion - Lead
30. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Blueberry Lemonade - Lead
31. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Peach Mango - Lead
32. Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Cookies & Cream - Lead
33. Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Men - Lead
34. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Cookies and Cream - Lead
35. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Decadent Brownie Cheesecake - Lead
36. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Triple Chocolate Supreme - Lead



- 37. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Cookies and Cream - Lead**
- 38. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum Garcinia Plus Triple Dose Garcinia Formula - Lead**
- 39. Iovate Health Sciences U.S.A. Inc. True Grit Protein Chocolate Milk Shake - Lead**
- 40. Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum BCAA 8:1:1 - Lead**
- 41. Iovate Health Sciences U.S.A. Inc. Clear Muscle SX-7 Revolution - Lead**
- 42. Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Phase8 Milk Chocolate - Cadmium**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since November 9, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

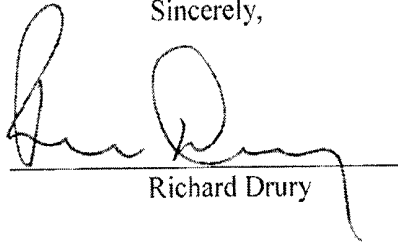
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
November 9, 2017  
Page 6

Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit  
Certificate of Service  
OEHHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)


**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences  
International Inc.**

I, Richard Drury, declare:

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

Dated: November 9, 2017

  
Richard Drury

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

On November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

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

November 9, 2017

Page 9

On November 9, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

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

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


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

November 9, 2017

Page 10

On November 9, 2017 between 10:00 a.m. and 4:30 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 November 9, 2017, in Fort Oglethorpe, Georgia.

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

Phyllis Dunwoody

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

November 9, 2017

Page 11

## Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Merced  
County  
550 W. Main 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, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

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

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

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

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

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92401

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

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

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

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

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

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

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

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

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

---

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



**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

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

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

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

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

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

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

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

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

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

---

<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# EXHIBIT E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA CERTIFIED MAIL**

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

**VIA ELECTRONIC MAIL**

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

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

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

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

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

**VIA ELECTRONIC MAIL**

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

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

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

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Iovate Health Sciences U.S.A. Inc.**  
**Iovate Health Sciences International Inc.**

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

1. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Nighttime Triple Chocolate Milkshake - Lead**
2. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Mocha Cappuccino Swirl - Lead**
3. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Cinnamon Swirl - Lead**
4. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Toasted S'Mores - Lead**
5. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Chocolate Supreme - Lead**
6. **Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Women - Lead**
7. **Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Test SX-7 Black Onyx Men's Daily Multivitamin & Vitality Formula - Lead**
8. **Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Sport SX-7 Black Onyx Elite Performance Multivitamin for Men - Lead**
9. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped Chocolate Fudge Brownie - Lead**
10. **Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Vanilla Birthday Cake - Lead**
11. **Iovate Health Sciences U.S.A. Inc. MuscleTech ProSeries Alpha Test Testosterone Booster Max Strength - Lead**
12. **Iovate Health Sciences U.S.A. Inc. PureGenix Garcinia Cambogia+ with 60% HCA - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.



November 10, 2017

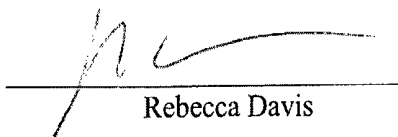
Page 4

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since November 10, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

  
Rebecca Davis

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences International Inc. and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Iovate Health Sciences U.S.A. Inc. and Iovate Health Sciences  
International Inc.**

I, Rebecca Davis, declare:

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

Dated: November 10, 2017

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

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
1105 North Market Street, Suite 1330  
Wilmington, DE 19801

The Corporation Trust Company  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
1209 Orange Street  
Wilmington, DE 19801

Current CEO or President  
Iovate Health Sciences U.S.A. Inc.  
3880 Jeffrey Boulevard  
Buffalo, NY 14219

CT Corporation System  
(Iovate Health Sciences International Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

Current CEO or President  
Iovate Health Sciences International Inc.  
381 North Service Road West  
Oakville ON L6M 0H4  
Canada

CT Corporation System  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
111 Eighth Avenue  
New York, NY 10011

CT Corporation System (C0168406)  
(Iovate Health Sciences U.S.A. Inc.'s  
Registered Agent for Service of Process)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

On November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

November 10, 2017

Page 7

On November 10, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

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

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

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
November 10, 2017  
Page 8

On November 10, 2017 between 10:00 a.m. and 4:30 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 November 10, 2017, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

Service List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Merced  
County  
550 W. Main 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, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

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

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

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

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

District Attorney, San  
Bernardino County  
316 N. Mountain View  
Avenue  
San Bernardino, CA 92401

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

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

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

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

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

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

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

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

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

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

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

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

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

---

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

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

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

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

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

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



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

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

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

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

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

---

<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:

<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# EXHIBIT F

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Exhibit F**  
**List of Covered Products**

	Product Name
1.	Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Mixed Berry
2.	Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Vanilla
3.	Iovate Health Sciences U.S.A. Inc. Herbal Zen Nutrition 100% Pure Plant-Based Protein Chocolate
4.	Iovate Health Sciences U.S.A. Inc. Epiq Gainer Milk Chocolate
5.	Iovate Health Sciences U.S.A. Inc. Hydroxycut Appetite Control Plus Appethyl Mixed Berry Smoothie
6.	Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Caffeine Free
7.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Mass Tech Milk Chocolate
8.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anabolic Halo Chocolate
9.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Fruit Punch
10.	Iovate Health Sciences U.S.A. Inc. Muscletech Performance Series Anarchy Blue Raspberry
11.	Iovate Health Sciences U.S.A. Inc. Hydroxycut Lean Protein Chocolate Fudge
12.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Gourmet Milk Chocolate
13.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Vanilla
14.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Gourmet Milk Chocolate
15.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Vanilla Ice Cream
16.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Casein Strawberry Shortcake
17.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Vanilla Caramel
18.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum Iso-Zero Unflavored
19.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Beef Protein Double Dutch Chocolate
20.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Peanut Butter Chocolate

**Exhibit F**  
**List of Covered Products**

	Product Name
21.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 White Chocolate
22.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Cookies and Cream
23.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Strawberry
24.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Raspberry Ketones+
25.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Konjac Root+
26.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Phase8 Milk Chocolate
27.	Iovate Health Sciences U.S.A. Inc. MuscleTech Essential Series Platinum 100% Iso-Whey Vanilla Ice Cream
28.	Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Fruit Punch Blast
29.	Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Watermelon
30.	Iovate Health Sciences U.S.A. Inc. XenCore Hardcore Pre Workout CORE Blue Raspberry
31.	Iovate Health Sciences U.S.A. Inc. Xenadrine 7X More Weight Loss Than Dieting Alone
32.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Pink Lemonade
33.	Iovate Health Sciences U.S.A. Inc. MuscleTech Performance Series Anarchy Watermelon
34.	Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Creamy Vanilla
35.	Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake French Vanilla
36.	Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Plant-Based Protein Nutritional Shake Very Berry
37.	Iovate Health Sciences U.S.A. Inc. MuscleTech GAKIC VO2 Max SX-7
38.	Iovate Health Sciences U.S.A. Inc. Hydroxycut SX-7 Fruit Punch Fusion
39.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit Lean Protein Rich Chocolate
40.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Pre-Workout Explosion Fruit Punch
41.	Iovate Health Sciences U.S.A. Inc. Pro Clinical Hydroxycut Max! For Women
42.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey

**Exhibit F**  
**List of Covered Products**

	Product Name
	Isolate+ Plus Elite Series French Vanilla
43.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Casein Protein Elite Series Triple Chocolate
44.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Isolate+ Plus Elite Series Decadent Chocolate
45.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Triple Chocolate
46.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Vanilla Cream
47.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Whey Protein+ Plus Elite Series Cookies & Cream
48.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Instant Protein Smoothie Mixed Berry
49.	Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Cookies & Cream Cake Batter Flavor
50.	Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Rich Vanilla Flavor
51.	Iovate Health Sciences U.S.A. Inc. Fuel:One 100% Whey Protein Whey Build Chocolate Brownie Flavor
52.	Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Rich Chocolate Flavor
53.	Iovate Health Sciences U.S.A. Inc. Fuel:One Isolate Build Vanilla Caramel Flavor
54.	Iovate Health Sciences U.S.A. Inc. Fuel:One Complex-I Chocolate Brownie Flavor
55.	Iovate Health Sciences U.S.A. Inc. Fuel:One Micellar Whey Build Chocolate Fudge Flavor
56.	Iovate Health Sciences U.S.A. Inc. Fuel:One Thermo Stack
57.	Iovate Health Sciences U.S.A. Inc. Epiq Isolate Milk Chocolate
58.	Iovate Health Sciences U.S.A. Inc. Epiq Isolate Rich Vanilla
59.	Iovate Health Sciences U.S.A. Inc. Epiq 3x Lean Muscle
60.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Isolate+ Plus Elite Series Decadent Chocolate
61.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Vanilla Cream
62.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Triple Chocolate

**Exhibit F**  
**List of Covered Products**

	Product Name
63.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based + Vanilla
64.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Brownie
65.	Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Birthday Cake
66.	Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Triple Chocolate
67.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Baked Protein Bar Chocolate Chip Cookie Dough
68.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Cookies & Cream
69.	Iovate Health Sciences U.S.A. Inc. MuscleTech Mission1 Clean Protein Bar Chocolate Peanut Butter
70.	Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Decadent Chocolate
71.	Iovate Health Sciences U.S.A. Inc. StrongGirl Isolate Complete Lean Nutritional Protein Shake Vanilla Ice Cream
72.	Iovate Health Sciences U.S.A. Inc. Purely Inspired 100% Pure 7-Day Cleanse With Active Probiotics
73.	Iovate Health Sciences U.S.A. Inc. Purely Inspired Organic Protein 100% Plant-Based Nutritional Shake Decadent Chocolate
74.	Iovate Health Sciences U.S.A. Inc. True Grit Test Booster
75.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech 100% Whey Protein+ Plus Elite Series Strawberry Smoothie
76.	Iovate Health Sciences U.S.A. Inc. Epiq Quad Test
77.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition Fit 100% Protein Isolate French Vanilla
78.	Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Raspberry Lemonade
79.	Iovate Health Sciences U.S.A. Inc. MuscleTech #Shatter SX-7 Black Onyx Ripped Cherry Limeade Twist
80.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper- Build Extreme Fruit Punch
81.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Complete Recovery Protein Elite Series Decadent Chocolate



**Exhibit F**  
**List of Covered Products**

	Product Name
82.	Iovate Health Sciences U.S.A. Inc. MuscleTech Premium 100% Whey Protein+ Plus Deluxe Vanilla
83.	Iovate Health Sciences U.S.A. Inc. Six Star Pro Nutrition MuscleTech Chewy & Delicious Protein Elite Series Peanut Butter Chocolate
84.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Test HD Hardcore Testosterone Booster
85.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Milk Chocolate
86.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Cookies and Cream
87.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Mass Tech Scientifically Superior Mass Gainer Strawberry
88.	Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Vanilla
89.	Iovate Health Sciences U.S.A. Inc. MuscleTech Premium Mass Gainer Strawberry
90.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Café Blended Coffee Whey Protein Shake
91.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Hazelnut
92.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost French Vanilla
93.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Amino Boost Caramel
94.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Strawberry Cheesecake
95.	Iovate Health Sciences U.S.A. Inc. MuscleTech Protein Cookie Chocolate Chip
96.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey+Greens Vanilla
97.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries All-In-One Whey +Greens Milk Chocolate
98.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Creamy Vanilla
99.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Vanilla Bean
100.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Peanut Butter
101.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Chocolate Chip Cookie Dough

**Exhibit F**  
**List of Covered Products**

	Product Name
102.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Strawberry
103.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso- Whey Peanut Butter Chocolate Twist
104.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Iso- Whey Strawberry Shortcake
105.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Strawberry Cream
106.	Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate French Vanilla
107.	Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series 100% Whey Protein Plus+ Isolate Double Rich Chocolate
108.	Iovate Health Sciences U.S.A. Inc. MuscleTech Lab Series PRE Build Sugar Free Gummy Worm
109.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Cookies & Cream
110.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Vanilla Ice Cream
111.	Iovate Health Sciences U.S.A. Inc. Hydroxycut Platinum Weight Loss Plus Probiotics & Vitamins
112.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped French Vanilla Swirl
113.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Fruit Punch
114.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Icy Rocket Freeze
115.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum 100% Whey Vanilla Cupcake
116.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Amino Build Next Gen Ripped Peach Mango
117.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Hyper- Build Blue Raspberry Blast
118.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Candy Watermelon
119.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Icy Rocket Freeze
120.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Ripped Explosive Energy Pre-Workout Advanced Weight Loss Strawberry Limeade
121.	Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Sport SX-7 Black Onyx Elite Performance Multivitamin for Women

**Exhibit F**  
**List of Covered Products**

	Product Name
122.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Cell Tech Grape
123.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Plus+ Isolate Gold Double Rich Chocolate
124.	Iovate Health Sciences U.S.A. Inc. MuscleTech L-Arginine SX-7 Black Onyx Icy Rocket Freeze
125.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Fruit Punch Blast
126.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Icy Rocket Freeze
127.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Next Gen Pre-Workout Explosive Energy Blue Raspberry Fusion
128.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Blueberry Lemonade
129.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries VaporX5 Neuro Pre-Workout Enhanced Mental Focus Peach Mango
130.	Iovate Health Sciences U.S.A. Inc. MuscleTech Nitro Tech Crunch High-Performance Protein Energy Bar Cookies & Cream
131.	Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Men
132.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Cookies and Cream
133.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Decadent Brownie Cheesecake
134.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Power Triple Chocolate Supreme
135.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Cookies and Cream
136.	Iovate Health Sciences U.S.A. Inc. True Grit Protein Chocolate Milk Shake
137.	Iovate Health Sciences U.S.A. Inc. MuscleTech EssentialSeries Platinum BCAA 8:1:1
138.	Iovate Health Sciences U.S.A. Inc. Clear Muscle SX-7 Revolution
139.	Iovate Health Sciences U.S.A. Inc. MuscleTechPerformanceSeries Phase8 Milk Chocolate
140.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Nighttime Triple Chocolate Milkshake
141.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Mocha Cappuccino Swirl

**Exhibit F**  
**List of Covered Products**

	Product Name
142.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Cinnamon Swirl
143.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Toasted S'Mores
144.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Casein Gold Chocolate Supreme
145.	Iovate Health Sciences U.S.A. Inc. MuscleTech VitaMax Energy & Metabolism SX-7 Black Onyx Advanced Daily Vitamin for Women
146.	Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Test SX-7 Black Onyx Men's Daily Multivitamin & Vitality Formula
147.	Iovate Health Sciences U.S.A. Inc. MuscleTech Vitamax Sport SX-7 Black Onyx Elite Performance Multivitamin for Men
148.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Ripped Chocolate Fudge Brownie
149.	Iovate Health Sciences U.S.A. Inc. MuscleTech PerformanceSeries Nitro Tech Whey Isolate+ Lean MuscleBuilder Vanilla Birthday Cake
150.	Iovate Health Sciences U.S.A. Inc. MuscleTech ProSeries Alpha Test Testosterone Booster Max Strength