

June 3, 2010

BY U.S. FIRST CLASS MAIL

Current CEO or President
Bio-Engineered Supplements & Nutrition, Inc.
5901 Broken Sound Parkway NW, Suite 600
Boca Raton, FL 33487

Current CEO or President
Cytosport, Inc.
4795 Industrial Way
Benicia, CA 94510

Current CEO or President
General Nutrition Corporation
300 Sixth Avenue
Pittsburgh, PA 15222

Current CEO or President
Next Proteins, Inc.
5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

**Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986
(Proposition 65), Section 25249.6 of the California Health and Safety Code, for
Exposing Consumers of Protein Supplements to Lead.**

Dear Sir/Madam:

The Environmental Law Foundation ("ELF") is a California non-profit organization dedicated to the preservation and enhancement of human health and the environment. ELF has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and protecting the public from harmful substances.

This letter constitutes notice that the entities identified in Exhibit A have violated and continue to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* Specifically, these entities have violated and continue to violate the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..."

The list of entities subject to this Notice is attached as Exhibit A. Consumer protein supplement products sold by these entities contain lead, a chemical known to the State to cause reproductive toxicity and cancer. On each and every day from June 3, 2009 through the present, these entities have exposed and continue to expose consumers of their protein supplements to lead. Exposure to the consumers has occurred through ingestion of the protein supplements. Specific examples of protein supplement products that are the subject of this Notice are identified in the document attached as Exhibit B.

Because lead is a chemical listed in Proposition 65 as a human carcinogen and a reproductive toxin, pursuant to Health and Safety Code § 25249.6 the entities in Exhibit A were, and are, required to provide clear and reasonable warnings to all consumers of protein supplements before exposing them to lead. Pursuant to Health and Safety Code section 25249.7(d), ELF intends to bring suit in the



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public interest against the entities in Exhibit A sixty days hereafter to correct the violation occasioned by the failure to warn all consumers of the exposure to lead.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this notice a Certificate of Merit.

While violations are occurring throughout the State of California, the noticing parties are unable to know for certain if violations are occurring in all of the 58 counties in California. Therefore, pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this notice to the district attorney for each of the 58 counties in California. Further, the noticing parties provide this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco and San Jose.

ELF is located at: 1736 Franklin, 9th Floor, Oakland, California 94612, telephone (510) 208-4555. ELF is represented in this matter by the law firms of Baron & Budd, P.C. and the Law Offices of April Strauss. All communications concerning this matter should be directed to:

James Wheaton
Environmental Law Foundation
1736 Franklin, 9th Floor
Oakland, California 94612
Telephone: (510) 208-4555
Facsimile: (510) 208-4562

Sincerely,

BARON & BUDD, P.C.

Laura Baughman
Attorney for ELF

Enclosures

cc: Attorney General of California
(with attached confidential factual information supporting Certificate of Merit)
Los Angeles City Attorney
San Diego City Attorney
City Attorney of San Francisco
San Jose City Attorney
District Attorneys for California's 58 Counties
(see attached certificate of service)

EXHIBIT A

Bio-Engineered Supplements & Nutrition, Inc.
5901 Broken Sound Parkway NW, Suite 600
Boca Raton, FL 33487

Cytosport, Inc.
4795 Industrial Way
Benicia, CA 94510

General Nutrition Corporation
300 Sixth Avenue
Pittsburgh, PA 15222

Next Proteins, Inc.
5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

EXHIBIT B

1. **BSN Core Series Lean Dessert Protein Shake Chocolate Fudge Pudding**
2. **BSN Core Series Syntha-6 Ultra Chocolate Milkshake**
3. **Designer Whey 100% Whey Protein Chocolate**
4. **GNC Lean Shake Chocolate**
5. **GNC Pro Performance AMP Amplified Wheyboldic Extreme 60 Chocolate**
6. **Muscle Milk Chocolate**
7. **Muscle Milk Nutritional Shake Chocolate (liquid)**
8. **Muscle Milk Vanilla Crème**

**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 Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts: 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. Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an 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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Laura Baughman, hereby declare:

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

Dated: June 3, 2010



Laura Baughman, Attorney for
Environmental Law Foundation

CERTIFICATE OF SERVICE

I am employed in the City of Dallas in the County of Dallas, Texas. I am over the age of eighteen years and not a party to the within action. My business address is 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219.

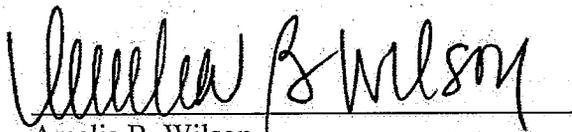
On June 3, 2010 I served the following document(s):

NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65), SECTION 25249.6 OF THE CALIFORNIA HEALTH AND SAFETY CODE, FOR EXPOSING CONSUMERS OF PROTEIN SUPPLEMENTS TO LEAD WITHOUT A WARNING

by UNITED STATE FIRST CLASS MAIL by placing a true and correct copy thereof in an envelope addressed to each of the persons named below at the address shown, and by sealing and depositing said envelope in the United States mail at Dallas, Texas, with postage fully prepaid to:

See Attached List.

Executed on this 3rd day of June, 2010 at Dallas, Texas. I declare under penalty of perjury under the laws of the State of California and Texas that the foregoing is true and correct.


Amelia B. Wilson

SERVICE LIST

Current CEO or President
Bio-Engineered Supplements & Nutrition, Inc.
5901 Broken Sound Parkway NW, Suite 600
Boca Raton, FL 33487

Current CEO or President
Cytosport, Inc.
4795 Industrial Way
Benicia, CA 94510

Current CEO or President
General Nutrition Corporation
300 Sixth Avenue
Pittsburgh, PA 15222

Current CEO or President
Next Proteins, Inc.
5050 Avenida Encinas, Suite 350
Carlsbad, CA 92008

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

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

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

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

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

District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988

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

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

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

District Attorney of Imperial County
939 Main Street
El Centro, CA 92243

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

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

District Attorney of Contra Costa County
725 Court Street, Room 402
Martinez, CA 94553

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

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

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

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

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

District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130

District Attorney of Nevada County
201 Church St., Suite 8
Nevada City, CA 95959

District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012

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

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

District Attorney of Placer County
11562 "B" Avenue
Auburn, CA 95603

District Attorney of Marin County
3501 Civic Center Dr., Room 183
San Rafael, CA 94903

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

District Attorney of Mariposa County
P.O. Box 730
Mariposa, CA 95338

District Attorney of Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482

District Attorney of Sacramento County
901 "G" Street
Sacramento, CA 95814

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

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

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

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

District Attorney of Mono County
P.O. Box 617
Bridgeport, CA 93517

District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, CA 92112

District Attorney of Monterey County
PO Box 1131
Salinas, CA 93901

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

District Attorney of San Joaquin County
P.O. Box 990
Stockton, CA 95201

District Attorney of Stanislaus County
800 11th Street, Room 200
Modesto, CA 95353

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

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of San Mateo County
400 County Ctr, 3rd Fl
Redwood City, CA 94063

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

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

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95061

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downieville, CA 95936

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County
600 Union Avenue
Fairfield, CA 94533

District Attorney of Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001_1632

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Trinity County
P.O. Box 1310
Weaverville, CA 96093

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
2 South Green
Sonora, CA 95370

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

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

San Jose City Attorney's Office
151 West Mission Street
San Jose, CA 95110

Los Angeles City Attorney's Office
Room 1800, City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, 12th Floor
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

Ken Alex, Special Assistant Attorney General
Susan Fiering, Deputy Attorney General
California Attorney General's Office
1515 Clay Street
Oakland, CA 94612