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July 9, 2010

Re: Notice of Violation Against Dymatize Enterprises, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead and arsenic contained in the named product manufactured and distributed by Dymatize Enterprises, Inc.

This letter constitutes notification that Dymatize Enterprises, Inc. located at 13737 N. Stemmons Fwy Farm, Dallas, TX 75234 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed a product which has exposed and continue to expose numerous individuals within California to lead and arsenic. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. Arsenic was listed pursuant to Proposition 65 as a carcinogen on February 27, 1987. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Dymatize Enterprises, Inc. is exposing people to lead and arsenic from the following product: Dymatize Nutrition Xpand Xtreme Pump Fruit Punch.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Dymatize Enterprises, Inc. is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead and arsenic. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead and arsenic without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from 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, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Dymatize Enterprises, Inc. unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead and arsenic exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'MF' or similar initials, written in a cursive style.

Michael Freund

cc: Chris Heptinstall, ERC
Karen Evans, ERC

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead and arsenic from one of the products that it manufactures and distributes. Please refer to the Notice of Violation for additional details regarding the alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals subject to this action. In particular, I have consulted with the laboratory that conducted the testing to determine the concentration of lead and arsenic in the product identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for toxic chemicals. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead and arsenic through oral exposure (ingestion).
4. Based on my consultation with the laboratory, the results of the laboratory testing, as well as published studies on lead and arsenic, it is clear that there is sufficient evidence that

human exposures exist from exposure to the named product from the noticed party.

Furthermore, as a result of the above, I have concluded that 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 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 California 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: July 9, 2010



Michael Freund
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On July 9, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2009 at Berkeley, California.



Michael Freund

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D Oroville, CA 95965

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Madera, CA 93637

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Santa Ana, CA 92701

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Fresno, CA 93721

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Bakersfield, CA 93301

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Alturas, CA 96101-4020

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Tahoe City, CA 96145

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San Bernardino, CA 92415

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Ventura, CA 93009

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Santa Barbara, 93101

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Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Ave. # 1620
San Diego, CA 92101

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

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
PO Box 70550
Oakland, CA 94612

Ted Casey, CEO
Dymatize Enterprises, Inc.
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Dallas, TX 75234