

LAW OFFICE OF
KAREN A. EVANS
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San Diego, CA 92116
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July 19, 2013

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

Downright Healthy Foods, L.P.
Johnvince Foods
Tourmaline General Partner, Inc.

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

- **Genisoy Delicious Soy Protein Bar - Fudge Cookies & Cream Flavor – Lead**
- **Genisoy Soy Protein Shake Strawberry Banana Flavor – Lead**
- **Soy Protein Ultra Shake Mix - Vanilla Flavor – Lead**
- **Genisoy Protein Crunch Peanut Butter – Lead**
- **Genisoy Food Co., Inc. – Genisoy Triple Layer Chocolate Caramel Flavor – Lead**
- **Genisoy Food Co., Inc. – Genisoy Café Mocha Fudge – Lead**
- **Genisoy Food Co., Inc. – Genisoy Ultra Soy Protein Shake for Improved Bone Health - Chocolate – Lead**
- **Genisoy Food Co., Inc. – Genisoy Ultra Soy Protein Shake for Improved Bone Health - Natural Flavor – Lead**

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- **MLO Products Super High Protein Powder 454g – Lead**
- **MLO Products Bio Protein Bar Double Chocolate Flavor (81g) – Lead**
- **Genisoy Food Co. Inc. Soy Protein Powder Natural Protein Powder with Other Natural Flavors – 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.

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 13, 2007, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Downright Healthy Foods, L.P.; Johnvince Foods; and Tourmaline General Partner, Inc. only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Downright Healthy Foods, L.P.; Johnvince Foods; and Tourmaline General Partner, Inc.

I, Karen A. Evans, declare:

1. This Certificate of Merit accompanies the attached 60-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: July 19, 2013

Karen A. Evans

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 July 19, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Downright Healthy Foods, L.P.
555 Steeprock Drive
North York, Ontario CAN
M3J 2Z6

Current CEO or President
Tourmaline General Partner, Inc.
555 Steeprock Drive
North York, Ontario CAN
M3J 2Z6

Current CEO or President
Johnvince Foods
555 Steeprock Drive
North York, Ontario CAN
M3J 2Z6

On July 19, 2013, I electronically served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof 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 July 19, 2013, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on July 19, 2013, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

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Service List

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| District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612 | District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012 | District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101 | District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370 |
| District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120 | District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637 | District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103 | District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009 |
| District Attorney, Amador County 708 Court Street Jackson, CA 95642 | District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903 | District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202 | District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695 |
| District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965 | District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338 | District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408 | District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 |
| District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 | District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482 | District Attorney, Santa Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063 | Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012 |
| District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932 | District Attorney, Merced County 550 W. Main Street Merced, CA 95340 | District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 | San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101 |
| District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553 | District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020 | District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110 | San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102 |
| District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531 | District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517 | District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060 | San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113 |
| District Attorney, El Dorado County 515 Main Street Placerville, CA 95667 | District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902 | District Attorney, Shasta County 1355 West Street Redding, CA 96001 | |
| District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721 | District Attorney, Napa County 931 Parkway Mall Napa, CA 94559 | District Attorney, Sierra County PO Box 457 Downieville, CA 95936 | |
| District Attorney, Glenn County Post Office Box 430 Willows, CA 95988 | District Attorney, Nevada County 110 Union Street Nevada City, CA 95959 | District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097 | |
| District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501 | District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701 | District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533 | |
| District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243 | District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678 | District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403 | |
| District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514 | District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971 | District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354 | |
| District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301 | District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501 | District Attorney, Sutter County 446 Second Street Yuba City, CA 95991 | |
| District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230 | District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814 | District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080 | |
| District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453 | District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023 | District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093 | |
| District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130 | District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004 | District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291 | |