

Aqua Terra Aeris Law Group

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February 13, 2015

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("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 Violator 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 Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Myogenix, Incorporated

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:

Myogenix Inc. 100% New Zealand Whey Isolate Myo-Ice Dark Chocolate Flavor - Lead

Myogenix Inc. Liver Support Extra Strength - Lead

Myogenix Inc. ADiPRO Max - Lead

Myogenix Inc. ADiPRO A2 - 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 February 13, 2012, 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 Violator violated Proposition 65 because it 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 Violator 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; (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. 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Matthew Maclear

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Myogenix, Incorporated and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Myogenix, Incorporated

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 13, 2015



Matthew Maclear

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 13, 2015, I served the following documents: **NOTICE OF VIOLATION 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 President or CEO
Myogenix, Incorporated
2309 A Street
Santa Maria, CA 93455

Capitol Corporate Services, Inc.
(Myogenix, Incorporated's Registered Agent
for Service of Process)
455 Capitol Mall, Suite 217
Sacramento, CA 95814

Current President or CEO
Myogenix, Incorporated
13835 East Nees Avenue
Clovis, CA 93619

On February 13, 2015, 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 February 13, 2015, 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 February 13, 2015, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Service List

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 2nd 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, San Mateo County
400 County Ctr., 3rd 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,
16th 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
Post Office Box 720
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
201 Commercial Street
Nevada City, CA 95959

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Humboldt County
825 5th Street 4th 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 12th 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, 2nd 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