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VIA CERTIFIED MAIL

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Current CEO or President
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3880 Jeffrey Boulevard
Buffalo, NY 14219

Current CEO or President
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(Iovate Health Sciences U.S.A. Inc.'s
Registered Agent for Service of Process)
818 West Seventh Street, Suite 930
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VIA CERTIFIED MAIL

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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

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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
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900 Ward Street
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Gregory Alker, Assistant District Attorney
San Francisco County
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Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

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

Dije Ndreu, Deputy District Attorney
Monterey County
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901 G Street
Sacramento, CA 95814
Prop65@sacda.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

Service List

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708 Court Street
Jackson, CA 95642

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

District Attorney, Colusa
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Colusa, CA 95932

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County
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Crescent City, CA 95531

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