

Michael Freund & Associates

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Michael Freund, Esq.

April 20, 2021

**NOTICE OF VIOLATION 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, 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 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 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 Violators identified below.

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

**Riff Enterprises, Inc., individually and dba Nuzest USA and Nuzest
Nuzest IP Pty Ltd, individually and dba Nuzest USA and Nuzest
Nuzest Life Pty Ltd, individually and dba Nuzest USA and Nuzest**

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

- 1. Nuzest Nutrition For Life Kids Good Stuff Multivitamin Drink Mix Wild Strawberry - Lead**
- 2. Nuzest Nutrition For Life Clean Lean Protein Bar Vanilla Almond – 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 recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 20, 2018, 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 ingesting these products with appropriate warnings that they are being exposed to these chemical.

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; (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 chemical, 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 or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Riff Enterprises, Inc., individually and dba Nuzest USA and Nuzest; Nuzest IP Pty Ltd, individually and dba Nuzest USA and Nuzest; and Nuzest Life Pty Ltd, individually and dba Nuzest USA and Nuzest 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 Riff Enterprises, Inc., individually and dba Nuzest USA and Nuzest; Nuzest IP Pty Ltd, individually and dba Nuzest USA and Nuzest; and Nuzest Life Pty Ltd, individually and dba Nuzest USA and Nuzest

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: April 20, 2021

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 April 20, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties 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
Riff Enterprises, Inc., individually and
dba Nuzest USA and Nuzest
2003 NW 57th St, Unit 102
Seattle, WA 98107

Current President or CEO
Riff Enterprises, Inc., individually and
dba Nuzest USA and Nuzest
1100 Dexter Ave N, Ste 100
Seattle, WA 98109

Current President or CEO
Riff Enterprises, Inc., individually and
dba Nuzest USA and Nuzest
1455 NW Leary Way, Ste 400
Seattle, WA 98107

Current President or CEO
Nuzest Life Pty Ltd., individually and dba
Nuzest USA and Nuzest
PO Box 1686
Potts Point NSW 1335
Australia

Current President or CEO
Riff Enterprises, Inc., individually and
dba Nuzest USA and Nuzest
28936 Avenue Williams
Valencia, CA 91355

Current President or CEO
Nuzest IP Pty Ltd., individually and dba
Nuzest USA and Nuzest
PO Box 1686
Potts Point NSW 1335
Australia

Current President or CEO
Nuzest Life Pty Ltd., individually and dba
Nuzest USA and Nuzest
Unit 405
24-30 Springfield Ave
Potts Point NSW 2011
Australia

Immix Services Washington Inc
(Registered Agent for Riff Enterprises, Inc.,
individually and dba Nuzest USA and Nuzest)
400 Winslow Way E Ste 210
Bainbridge Island, WA 98110

Current President or CEO
Nuzest IP Pty Ltd., individually and dba
Nuzest USA and Nuzest
Unit 405
24-30 Springfield Ave
Potts Point NSW 2011
Australia

On April 20, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 April 20, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

Barbara Yook, District Attorney
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891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Jeannine M. Pacioni, District Attorney
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Prop65DA@co.monterey.ca.us

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Allison Haley, District Attorney
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1127 First Street, Ste C
Napa, CA 94559
CEPD@countyofnapa.org

Thomas L. Hardy, District Attorney
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168 North Edwards Street
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inyoda@inyocounty.us

Paul E. Zellerbach, District Attorney
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Riverside, CA 92501
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Michelle Latimer, Program Coordinator
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Susanville, CA 96130
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Clifford H. Newell, District Attorney
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Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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Mariposa, CA 95338
mcda@mariposacounty.org

Morgan Briggs Gire, District Attorney
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10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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

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davidhollister@countyofplumas.com

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Prop65@sacda.org

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San Diego, CA 92101
SanDiegoDAProp65@sdca.org

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San Diego, CA 92101
CityAttyProp65@sandiego.gov

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North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

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San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjca.org

Eric J. Dobroth, Deputy District Attorney
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County Government Center Annex, 4th Floor
Santa Luis Obispo, CA 93408
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cfepd@yolocounty.org

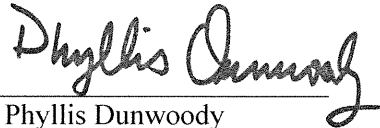
Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

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On April 20, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on April 20, 2021, in Fort Oglethorpe, Georgia.

A handwritten signature in cursive script, reading "Phyllis Dunwoody", written in black ink. The signature is positioned above a horizontal line.

Phyllis Dunwoody

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

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Service List

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

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

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

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

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Mendocino
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Ukiah, CA 95482

District Attorney, Tehama
County
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Red Bluff, CA 96080

District Attorney, Colusa
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Colusa, CA 95932

District Attorney, Modoc
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Crescent City, CA 95531

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Placerville, CA 95667

District Attorney, Orange
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300 N Flower St
Santa Ana, CA 92703

District Attorney, Yuba
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215 Fifth Street, Suite 152
Marysville, CA 95901

District Attorney, Fresno
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2220 Tulare Street, Suite 1000
Fresno, CA 93721

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Los Angeles, CA 90012

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Willows, CA 95988

District Attorney, San
Bernardino County
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San Bernadino, CA 92415

San Jose City Attorney's
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16th Floor
San Jose, CA 95113

District Attorney, Humboldt
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825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, San Mateo
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El Centro, CA 92243

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Lakeport, CA 95453

District Attorney, Solano
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675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Los Angeles
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211 West Temple St., Ste 1200
Los Angeles, CA 90012