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June 7, 2023

60-DAY NOTICE OF INTENT TO SUE

for violations of the Safe Water and Toxic Enforcement Act of 1986

VIA CERTIFIED FIRST CLASS MAIL

BellRing Brands, Inc.
Attn: Legal Department
2503 S. Hanley Road
St. Louis, MO 63144

Corporation Service Company
Agent for BellRing Brands, Inc.
251 Little Falls Drive
Wilmington, DE 19808

Premier Nutrition Company, LLC
Attn: Legal Department
1222 67th Street, Suite 210
Emeryville, CA 94608

CSC - Lawyers
Agent for Premier Nutrition Company, LLC
2710 Gateway Oaks Dr.
Sacramento, CA 95833

VIA ELECTRONIC FILING

State of California Department of Justice
Office of Attorney General of California
Filing link: oag.ca.gov/prop65

VIA FIRST CLASS MAIL

District Attorneys of California Counties and
City Attorneys, as in the Certificate of Service

VIA E-MAIL

District Attorneys of California Counties, as
in the Certificate of Service

**Re: NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE
SECTION 25249.6 BY**

To Whom It May Concern:

We represent Jeffrey Hughes (“Plaintiff”), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified in the California Health & Safety Code sections 25249.5, et seq. (“Proposition 65”), requires that a 60-day notice of intent to sue be provided to a violator of Cal. Health & Safety Code § 25249.6.

With this notice of violation (“Notice”), Plaintiff hereby gives written notice of the alleged violation, bringing this action in the public interest as defined under the Cal. Health & Safety Code § 25249.7(d), seeking to prosecute the alleged continuing noncompliance and to warn consumers about their exposure to the violative chemical(s), or reduce and/or eliminate consumer exposures from product(s) (collectively, the “Products”) listed in the table below, which are manufactured, distributed and/or sold by BellRing Brands, Inc. and Premier Nutrition Company, LLC (together, “Defendants”).

This Notice covers the violations of Proposition 65 that are currently known to Plaintiff from information now available as specifically related to the violating products listed below and manufactured, distributed or/and sold by Defendants. Plaintiff is continuing his investigation that may reveal further violations. The Products subject to this Notice, the chemical(s) in the Products identified as exceeding allowable levels are as follows:

Product	Flavor	Violative Chemical
Premier Protein Shakes	Chocolate	Lead
	Vanilla	
	Caramel	
	Café Latte	
Premier Plant Protein Powders	Vanilla	Lead
	Chocolate	

Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity, reproductive toxicity and cancer.

Defendants manufactured, produced, marketed, distributed and/or sold the Products which, according to laboratory test results, have exposed and continue to expose consumers within the State of California to lead. The primary route of the exposure has been through ingestion.

Cal. Health & Safety Code § 25249.6 requires that a “clear and reasonable” warning be provided prior to exposure to chemicals listed under Proposition 65. Defendants are in violation of Proposition 65 because they have failed to provide a warning to consumers that consumers are being exposed to lead in consuming the Products.

Plaintiff alleges that while in the course of doing business, Defendants were exposing consumers to lead without first providing a “clear and reasonable” warning. The method of warning should be a warning that appears on the product’s label. *See* Cal. Code Regs. tit. 27, § 25602, subd. (a)(3), and subd. (b) for internet purchases also at the point of sale, as applicable. But Defendants have

not provided any Proposition 65 warnings as required by law or any other appropriate warnings that persons handling, ingesting and/or otherwise using the Products are being exposed to lead.

With respect to the Products listed above, the violation commenced on the latter of the date that the Products were first offered for sale in California, or at least as of the date of this Notice, and have continued every day since the relevant date the violation commenced; and will continue every day henceforth until lead is removed from the Products, reduced to allowable levels, or until a “clear and reasonable” warning is provided to consumers by Defendants, as applicable, in accordance with the law.

Pursuant to Title 27, C.C.R. § 25903(b), copy of “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary” is attached hereto for reference by Defendants. For more information concerning the provisions of Proposition 65, contact OEHHA at 916-445-6900.

Pursuant to Title 11, C.C.R. § 3100, the “Certificate of Merit” is attached hereto.

Plaintiff intends to file a lawsuit after 60 days based on the facts set forth in this Notice. Meanwhile, we encourage a prompt resolution of this matter within the said period of 60 days where Defendants agrees to (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to lead; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b).

Notice of Duty to Preserve Evidence

“The duty to preserve evidence is triggered when litigation is pending or reasonably foreseeable, at which time a party is required to preserve all relevant evidence and put into place a litigation hold to preserve relevant documents.” *Net-Com Servs. v. Eupen Cable USA, Inc.*, 2013 U.S. Dist. LEXIS 109810, at *6-7 (C.D. Cal. Aug. 5, 2013) (citations omitted). We accordingly notify Premier of its duty to preserve evidence relevant to the potential litigation our client may initiate if Premier does not undertake the steps demanded herein. This includes, but is not limited to, documents, tangible things, and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit and that are in Premier’s custody or control.

Sincerely,



Trevor Flynn
Attorney for Jeffrey Hughes

Attachment: Certificate of Merit (Cal. Health & Safety Code § 25249.7(d)(1))

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

RE: Notice of Proposition 65 Violations by Premier Nutrition Company, LLC

I, Trevor Flynn, hereby declare:

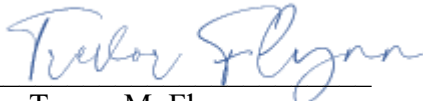
1. This Certificate of Merit accompanies the attached sixty-day notice in which California consumer Jeffrey Hughes alleges that BellRing Brands, Inc. and Premier Nutrition Company, LLC have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings that its Premier Protein Shakes expose consumers to a level of lead known to be unsafe.

2. I am an attorney representing the noticing consumer, Jeffrey Hughes, in this matter.

3. I have reviewed the facts of this case and 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 from the subject products' lead and, based on that information and on other information in my possession, believe there is a reasonable and meritorious case for a private action.

4. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and 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: June 7, 2023

By: 
Trevor M. Flynn
Attorney for Jeffery Hughes

(Attachments to Certificate of Merit – *for Attorney General Only*)

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am employed in the county where the mailing occurred. My business address is 2341 Jefferson St., Suite 200, San Diego, CA 92110.

On June 7, 2023, I served the following:

- 1.) 60-Day Notice of Intent to Sue for violations of the Safe Water and Toxic Enforcement Act of 1986;
- 2.) Certificate of Merit; and
- 3.) Appendix “A” - “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary”

on BellRing Brands, Inc. and Premier Nutrition Company, LLC and to their registered agents for service of process via First Class Certified Mail through the United States Postal Service by placing a true and correct copy of the aforementioned documents in a sealed envelope, and paying all postage and certified mail fees, and addressed as follows:

BellRing Brands, Inc.
Attn: Legal Department
2503 S. Hanley Road
St. Louis, MO 63144

Corporation Service Company
Agent for BellRing Brands, Inc.
251 Little Falls Drive
Wilmington, DE 19808

Premier Nutrition Company, LLC
Attn: Legal Department
1222 67th Street, Suite 210
Emeryville, CA 94608

CSC - Lawyers
Agent for Premier Nutrition Company, LLC
2710 Gateway Oaks Dr.
Sacramento, CA 95833

On June 7, 2023, I served the following documents:

- 1.) 60-Day Notice of Intent to Sue for violations of the Safe Water and Toxic Enforcement Act of 1986;
- 2.) Certificate of Merit;

- 3.) Certificate of Merit with Attached factual information sufficient to establish the basis of the Certificate of Merit (*only to the Attorney General of California*); and
- 4.) Appendix “A” - “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary;”

on the following parties by filing electronically a true and correct copy thereof as permitted through the website of the California Office of the Attorney General via link at oag.ca.gov/prop65:

State of California Department of Justice;
Office of the Attorney General of California.

On June 7, 2023, I served the following documents:

- 1.) 60-Day Notice of Intent to Sue for violations of the Safe Water and Toxic Enforcement Act of 1986; and
- 2.) Certificate of Merit

on the following public prosecutors to whom documents were sent via Electronic Mail or U.S. Mail:

See attached Distribution List

Dated: June 7, 2023

By: 

Caroline Emhardt

DISTRIBUTION LIST

Sent via Electronic Mail to the District Attorney for each County as follows:

Alameda County District Attorney CEPDProp65@acgov.org	Napa County District Attorney CEPD@countyofnapa.org	San Luis Obispo County District Attorney edobroth@co.slo.ca.us
Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	Nevada County District Attorney DA.Prop65@co.nevada.ca.us	Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us
Contra Costa County District Attorney sgrassini@contracostada.org	Placer County District Attorney prop65@placer.ca.gov	Santa Clara County District Attorney EPU@da.sccgov.org
Fresno County District Attorney consumerprotection@fresnocountyca.gov	Plumas County District Attorney davidhollister@countyofplumas.com	Santa Cruz County District Attorney Prop65DA@santacruzcounty.us
Inyo County District Attorney inyoda@inyocounty.us	Riverside County District Attorney Prop65@rivcoda.org	Sonoma County District Attorney Jeannie.Barnes@sonoma-county.org
Lassen County District Attorney mlatimer@co.lassen.ca.us	Sacramento County District Attorney Prop65@sacda.org	Tulare County District Attorney Prop65@co.tulare.ca.us
Mariposa County District Attorney mcda@mariposacounty.org	San Diego County District Attorney SanDiegoDAProp65@sdcda.org	Ventura County District Attorney daspecialops@ventura.org
Merced County District Attorney Prop65@countyofmerced.com	San Francisco County District Attorney alexandra.grayner@sfgov.org	Yolo County District Attorney cfepd@yolocounty.org
Monterey County District Attorney Prop65DA@co.monterey.ca.us	San Joaquin County District Attorney DAConsumer.Environmental@sjcda.org	

Sent via United States Mail to the District Attorney for each County as follows:

Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Orange County District Attorney PO Box 808 Santa Ana, CA 92702
Amador County District Attorney 708 Court, Suite 202 Jackson. CA 95642	San Benito County District Attorney 419 4th St Hollister, CA 95023
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Colusa County District Attorney 346 5th Street, Suite 101 Colusa, CA 95932	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	San Mateo County District Attorney 400 County Center Redwood City, CA 94063
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Shasta County District Attorney 1355 West Street Redding, CA 96001

Glenn County District Attorney PO Box 430 Willows, CA 95988	Sierra County District Attorney PO Box 457 Downieville, CA 95936
Humboldt County District Attorney 825 5th St., 4th Floor Eureka, CA 95501	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Imperial County District Attorney 939 W. Main St., 2nd Floor El Centro CA 92243-2860	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd. Hanford, CA 93230	Sutter County District Attorney 446 Second Street Yuba City, CA 95991
Lake County District Attorney 255 N Forbes St. Lakeport, CA 95453-4790	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080
Madera County District Attorney 209 W Yosemite Ave. Madera, CA 93637	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Marin County District Attorney 3501 Civic Center Drive, # 130 San Rafael, CA 94903	Tuolumne County District Attorney 2 S. Green St. Sonora, CA 95370
Mendocino County District Attorney P.O. Box 1000 Ukiah CA 95482	Yuba County District Attorney 215 5th St. Marysville, CA 95901
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	

Sent via United States Mail to City Attorneys as follows:

San Francisco City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102	San Diego City Attorney Civic Center Plaza 1200 Third Ave., #1620 San Diego, CA 92101
Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110