

Michael Freund & Associates

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Michael Freund, Esq.

June 28, 2024

**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 product 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 this product. 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:

**Future Kind, LLC
Miami Labs, Inc., individually and dba OpenStore
Open Store, Inc.**

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

- **Future Kind + Organic Vegan Vanilla Protein Supports Muscle & Recovery - Perfluorooctanoic Acid (PFOA)**

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical 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 this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 28, 2021, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. 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 this product with appropriate warnings that they are being exposed to this 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 Violator to: (1) recall the identified product so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for product sold in the future while reformulating such product to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed product, and (4) pay an appropriate civil penalty. 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 Future Kind, LLC, Miami Labs, Inc., individually and dba OpenStore and Open Store, 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 Future Kind, LLC, Miami Labs, Inc., individually and dba OpenStore and Open Store, Inc.

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.

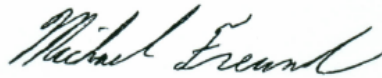
2. I am an attorney for the noticing party.

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 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: June 28, 2024



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 June 28, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Future Kind LLC
PO Box 7414
Jackson, WY 83002

Current President or CEO
Future Kind LLC
680 S Cache Street, Suite 100
Jackson, WY 83001

Mountain Business Center, LLC
(Registered Agent for Future Kind LLC)
960 Alpine Lane 4
PO Box 12200
Jackson, WY 83001

Current President or CEO
Miami Labs, Inc., individually and dba OpenStore
and Open Store, Inc.
2916 N Miami Avenue, Suite 1005
Miami, FL 33127

Current President or CEO
Future Kind LLC
3001 Northern Cross Blvd, #361
Fort Worth, TX 76137

Current President or CEO
Miami Labs, Inc., individually and dba OpenStore
and Open Store, Inc.
2916 N Miami Avenue, Suite 1100
Miami, FL 33127

Cogency Global Inc.
(Registered Agent for Miami Labs, Inc.,
individually and dba OpenStore and Open Store,
Inc.)
115 North Calhoun Street, Suite 4
Tallahassee, FL 32301

LegalInc Corporate Services Inc.
(Registered Agent for Open Store, Inc.)
131 Continental Drive, Suite 305
Newark, DE 19713

Cogency Global Inc.
(Registered Agent for Miami Labs, Inc., individually
and dba OpenStore)
850 New Burton Road, Suite 201
Dover, DE 19904

On June 28, 2024, 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

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On June 28, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Barbara Yook, District Attorney
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891 Mountain Ranch Road
San Andreas, CA 95249
Pro65Env@co.calaveras.ca.us

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

Stacey Grassini, Deputy District Attorney
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sgrassini@contracostada.org

Jeannine M. Pacioni, District Attorney
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EDCDAPROP65@edcda.us

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CEPD@countyofnapa.org

Lisa A. Smittcamp, District Attorney
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2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Clifford H. Newell, District Attorney
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201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

Devin Chandler, Program Coordinator
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2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

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

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

David Hollister, District Attorney
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davidhollister@countyofplumas.com

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Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
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Anne Marie Schubert, District Attorney
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Summer Stephan, District Attorney
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San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
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San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Henry Lifton, Deputy City Attorney
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1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatty.org

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

Eric J. Dobroth, Deputy District Attorney
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County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney
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EPU@da.sccgov.org

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney
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Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney
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Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney
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Gregory D. Totten, District Attorney
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800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

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On June 28, 2024, 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 June 28, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

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Service List

District Attorney, Alpine
County
17300 Hwy 89
P.O. Box 248
Markleeville, CA 96120

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

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

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

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

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
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Madera, CA 93637

District Attorney, Mendocino
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Alturas, CA 96101-4020

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Hollister, CA 95023

District Attorney, San
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San Bernadino, CA 92415

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Redwood City, CA 94063

District Attorney, Shasta
County
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Redding, CA 96001

District Attorney, Sierra
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Downieville, CA 95936

District Attorney, Siskiyou
County
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Yreka, CA 96097

District Attorney, Solano
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Fairfield, CA 94533

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

District Attorney, Sutter
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Yuba City, CA 95991

Attorney, Tehama County
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Red Bluff, CA 96080

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Weaverville, CA 96093

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Sonora, CA 95370

District Attorney, Yuba
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Los Angeles, CA 90012