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Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER

Mesrop Khoudagoulian  
Khoudagoulian & Foster  
130 North Brand Boulevard, Suite 202  
Glendale, CA 91203  
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Attorneys for Defendants  
MEDICAL RESEARCH INSTITUTE and  
VMI NUTRITION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN

ENVIRONMENTAL RESEARCH CENTER,  
a California non-profit corporation,

Plaintiff,

v.

VMI NUTRITION, INC. and MEDICAL  
RESEARCH INSTITUTE

Defendants.

CASE NO. CIV1202584

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: June 5, 2012

TRIAL DATE: Not Set

## 1. INTRODUCTION

1.1 On June 5, 2012, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing its Complaint for injunctive and declaratory relief and civil penalties pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"), against VMI Nutrition,

Inc. ("VMI") and Medical Research Institute ("MRI") ("Defendants"). ERC claims that products manufactured and distributed by Defendants, namely, MRI No2 Ripcuts Cellular Fat Burn-Grape, Medical Research Institute War Berry Attack, and MRI Black Powder Blue Raspberry (the "Covered Products") contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and exposes consumers at a level requiring a Proposition 65 warning. ERC and Defendants shall sometimes be referred to individually as a "Party" or collectively as the "Parties."

1.2 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 diligently prosecuted this matter and is settling this case in the public interest.

1.3 VMI is a privately owned contract manufacturer that specializes in the formulation, blending, packaging, and testing of nutritional consumer goods. MRI is a company that develops and markets nutraceuticals and is a subsidiary of Natrol, Inc. VMI manufacturers and MRI distributes the Covered Products to the public. Defendants are business entities that employ ten or more persons.

1.4 The Complaint is based on allegations contained in Notices of Violation against VMI dated November 5, 2010 and January 14, 2011, and a Notice of Violation against MRI dated July 9, 2010 served on the California Attorney General, other public enforcers and Defendants. A true and correct copy of these Notices of Violation is attached hereto as Exhibit A. More than 60-days have passed since these Notices of Violation were mailed and no public enforcement entity has filed a complaint against Defendants with regard to the Covered Products or the

violations. On September 24, 2010, ERC withdrew the product named No2 Charger Chocolate Blast from the July 9, 2010 Notice of Violation against MRI.

1.5 ERC's Notices of Violation and the Complaint in this action allege that the Covered Products expose persons in California to lead without first providing clear and reasonable warnings, in violation of Cal. Health & Safety Code Section 25249.6. Defendants deny all material allegations of the Notices of Violation and the Complaint and specifically deny that the Covered Products require a Proposition 65 warning.

1.6 The Parties have entered into this Consent Judgment in order to settle, compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum, except with respect to an action seeking to enforce the terms of this Consent Judgment.

1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding unrelated to these proceedings.

1.8 The Effective Date of this Consent Judgment shall be the date on which it is entered as a judgment by this Court.

1.9 Subsequent to ERC's Notices of Violation, Defendants stopped selling MRI Black Powder Blue Raspberry in California.

## 2. JURISDICTION AND VENUE

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in Marin County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been asserted in this action based on the facts alleged in the Notices of Violation or the Complaint.

## 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING

3.1 On or after the Effective Date, Defendants shall be permanently enjoined from manufacturing for sale in California, distributing into California, or directly selling to a consumer in California any Covered Product for which the maximum daily dose recommended on the label contains more than 0.5 micrograms of lead using the following formula for calculating the exposure level:  $\mu\text{g/day (ppm) of lead} \times \text{g/serving (using the serving appearing on the current product label)} \times \text{servings/day (using the largest number of servings currently appearing on the product label)} = \mu\text{g/day lead exposure. ("the Agreed Formula")}$  unless such Covered Product complies with the warning requirement set forth in Section 3.4.

3.2 **Clear and Reasonable Warnings.** For those Covered Products that are subject to the warning requirement of Section 3.1, Defendants shall provide the following warning as specified below:

**WARNING:** California Residents Only: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

The term "cancer" shall be used in the warning only if the maximum dose recommended on the label contains more than 15 micrograms of lead while using the testing protocol set forth in Section 3.5.

3.3 The warning shall be prominently affixed to or printed upon the product's label of any the Covered Products so as to be clearly conspicuous, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product. If the warning is displayed on the product's label, the warning shall be at least the same size as the largest of any other health or safety warnings on the product and the word "warning" shall be in all capital letters and in bold print.

3.4 **Further Labeling.** Defendants shall modify the label on Covered Products MRI No2 Ripcuts Cellular Fat Burn-Grape and Medical Research Institute War Berry Attack so that the number of servings per day for each product is one. This language shall be printed on the label in a conspicuous manner as set forth in Section 3.3.

3.5 **Testing.** Defendants shall continue to test the Covered Products for lead content to ensure lead levels are below 0.5 micrograms per day. Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity reagents that is consistent with the procedure set forth in Exhibit B or any substantively similar other testing method subsequently agreed upon in writing by the Parties. Defendants shall continue to arrange for lead testing, at a minimum, once a year, on or before the anniversary of the entry of the Consent Judgment, of at least five (5) randomly selected samples of each Covered Product. The testing shall continue so long as the Covered Products are sold in California or sold to a third party for retail sale in California. All testing pursuant to this Consent Judgment shall be performed by a laboratory

certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. Defendants may test the product themselves if they are a qualified laboratory as described above and utilize the testing procedure and methodology set forth in this Section. The laboratory shall follow this testing methodology and the Agreed Formula. The method of selecting samples for testing must comply with the regulations of the Food and Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80 (c). Nothing in this Consent Judgment shall limit Defendants' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.6 Defendants shall retain all test results and documentation for a period of four years from the date of the test and shall provide copies to ERC upon written request within 10 days of receipt of this request.

#### **4. SETTLEMENT PAYMENT**

4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees and costs, Defendants shall make a total payment of \$75,000.00 within ten (10) business days of receiving the Notice of Entry of Judgment. Said payment shall be for the following:

4.2 \$6,500.00 shall be payable as civil penalties pursuant to Health & Safety Code Section 25249.7 (b) (1). Of this amount, \$4,875.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA") and \$1,625.00 shall be payable to Environmental Research Center. Cal. Health & Safety Code Section 25249.12 (c) (1) & (d). Defendants shall send both civil penalty payments to ERC's counsel who shall be responsible to

forward the civil penalty payment to OEHHA along with a copy of the transmittal to counsel for Defendants.

4.3 \$24,116.00 payable to Environmental Research Center as reimbursement to ERC for (A) reasonable investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this action and (B) \$19,884.00 payable to Environmental Research Center in lieu of further civil penalties, for activities such as: (1) investigating, researching and testing consumer products that may contain Proposition 65 chemicals; (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) awarding grants to California non-profit foundations/entities dedicated to public health as set forth in the Addendum and taking into account: (a) the nexus between the alleged harm in the underlying cases(s) and the grant program work; (b) the potential for toxics reduction, prevention, remediation or education benefits to California residents from the proposal; (c) and ERC's assessment of the grantee's chances for success in its program work.

4.4 \$19,500.00 payable to Michael Freund as reimbursement of ERC's attorney's fees and \$5,000.00 payable to Karen Evans as reimbursement ERC's attorney's fees.

4.5 Defendants' payments shall be mailed to the Law Office of Michael Freund.

## **5. MODIFICATION OF CONSENT JUDGMENT**

This Consent Judgment may be modified only by written agreement and stipulation of the Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent judgment by the Court.

## **6. RETENTION OF JURISDICTION, ENFORCMENT OF CONSENT JUDGMENT**

6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this Consent Judgment.

6.2 Any Party may, by motion or application for an order to show cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing party may request that the Court award its reasonable attorney's fees and costs associated with such motion or application.

6.3 In any action brought by ERC or another enforcer alleging subsequent violations of Proposition 65 regarding the Covered Products, so long as Defendants are in compliance with Section 3 of this Consent Judgment, Defendants may assert any and all defenses that are available, including the res judicata or collateral estoppel effect of this Consent Judgment. Furthermore, the rights of Defendants to defend themselves and its actions in law or equity shall not be abrogated or reduced in any fashion by any terms of this Consent Judgment, and Settling Defendants shall be entitled to raise any and all applicable defenses and/or counterclaims, arising in law or equity against the Plaintiffs.

## **7. APPLICATION OF CONSENT JUDGMENT**

This Consent Judgment may apply to, be binding upon and benefit the Parties, and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, distributors, wholesalers, retailers, and all predecessors, successors and assigns of any of them.

## **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself, and in the public interest, and Defendants, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to

lead from the handling, use or consumption of the Covered Products. ERC, on behalf of itself, and in the public interest, hereby discharges Defendants and each of its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, distributors, wholesalers, retailers, and all other entities in the distribution chain down to the consumer of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and all claims asserted, or that could have been asserted, in this action arising from or related to the alleged failure to provide Proposition 65 warnings for the Covered Products regarding lead.

8.2 ERC, on behalf of itself only, hereby releases and discharges the Released Parties from any and all known and unknown past, present, and future rights, claims, causes of action, suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs, and expenses arising from or related to the claims asserted, or that could have been asserted, under state or federal law, regarding the presence of lead in the Covered Products or the facts alleged in the Notices of Violation or the Complaint, including without limitation any and all claims concerning the failure to provide clear and reasonable warnings of exposure to lead from the handling, use or consumption of the Covered Products or any other claim based on the facts or conduct alleged in the Complaint as to such products.

8.3 It is the intention of the Parties to this release that, upon entry of this Consent Judgment by the court, this Consent Judgment shall be effective as a full and final accord and satisfaction and release of every released claim up to and including the date of entry of the Consent Judgment.

8.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not now known to the Parties arising out of the facts alleged in the Notices of Violation or the

Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all such injuries, damages, liability, and claims, including all rights of action therefor. ERC has full knowledge of the contents of Cal. Civil Code Section 1542. ERC, on behalf of itself only, acknowledges that the claims released in Section 8.1 and 8.2 above may include unknown claims, and nevertheless waives Cal. Civil Code Section 1542 as to any such unknown claims. Cal. Civil Code Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

ERC, on behalf of itself only, acknowledges and understands the significance and consequences of this specific waiver of Cal. Civil Code Section 1542.

8.5 ERC, on one hand, and Defendants, on the other hand, release and waive all claims they may have against each other for any statements of actions made or undertaken by them in connection with the Notices of Violation or this action.

#### **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

9.1 In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

#### **10. GOVERNING LAW**

The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the state of California.

#### **11. PROVISION OF NOTICE**

All notices required to be given to either Party to this Consent Judgment by the other shall be sent to the following agents:

##### **FOR ENVIRONMENTAL RESEARCH CENTER:**

Chris Heptinstall, Executive Director  
Environmental Research Center  
3111 Camino del Rio North, Suite 400  
San Diego, CA 92108

Michael Bruce Freund  
Law Offices of Michael Freund  
1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

Karen Evans  
Coordinating Counsel  
Environmental Research Center  
4218 Biona Place  
San Diego, CA 92116  
Telephone: (619) 640-8100

##### **FOR VMI NUTRITION, INC. AND MEDICAL RESEARCH INSTITUTE**

Mesrop Khoudagoulian  
Khoudagoulian & Foster  
130 North Brand Boulevard, Suite 202  
Glendale, CA 91203  
Telephone: (818) 507-6666  
Facsimile: (818) 507-6667

Bruce Remund  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

## **12. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against any Party.

## **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

In the event a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

## **14. ENTIRE AGREEMENT, AUTHORIZATION**

14.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

14.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment.

**15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT**

15.1 This Settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Settlement and, being fully informed regarding the matters which are the subject of this action, to:

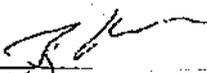
(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

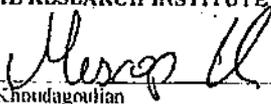
IT IS SO STIPULATED:

VMI NUTRITION, INC.

Dated: 8/27, 2012

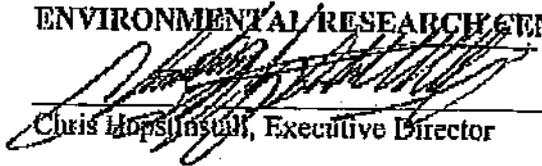
  
Bruce Leonard, Chief Operating Officer

Dated: 8/27, 2012

MEDICAL RESEARCH INSTITUTE  
  
Mesrop Khoudagoulian

**ENVIRONMENTAL RESEARCH CENTER**

Dated: 8/28/, 2012

  
Chris Hops (Instal), Executive Director

**APPROVED AS TO FORM:**

**KHOUDAGOULIAN AND FOSTER**

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Mestop Khoudagoulian

Dated: \_\_\_\_\_, 2012

**LAW OFFICE OF MICHAEL FREUND**

\_\_\_\_\_  
Michael Freund  
Attorney for Environmental Research Center

**ORDER AND JUDGMENT**

Based upon the Parties' stipulation, and good cause appearing, this Consent Judgment is approved and judgment is hereby entered according to its terms.

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Judge, Superior Court of the State  
of California

**ENVIRONMENTAL RESEARCH CENTER**

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Chris Hepstinstall, Executive Director

**APPROVED AS TO FORM:**

**KHOUDAGOULIAN AND FOSTER**

Dated: 9-4, 2012

Mesrop Khoudagoulian  
*Mesrop K*

Dated: 9-6, 2012

**LAW OFFICE OF MICHAEL FREUND**

Michael Freund  
*MF*  
Michael Freund  
Attorney for Environmental Research Center

**ORDER AND JUDGMENT**

Based upon the Parties' stipulation, and good cause appearing, this Consent Judgment is approved and judgment is hereby entered according to its terms.

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Judge, Superior Court of the State  
of California

MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992  
FAX 510/540-5543  
EMAIL FREUND1@AOL.COM

July 9, 2010

Re: Notice of Violation Against Medical Research Institute for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead contained in the named products manufactured and distributed by Medical Research Institute.

This letter constitutes notification that Medical Research Institute located at 21411 Prairie Street, Chatsworth, CA 91311 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Medical Research Institute is exposing people to lead from the following products: MRI NO2-Charger -- Chocolate Blast and MRI NO2 Ripcuts Cellular Fat Burn-Grape.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Medical Research Institute is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

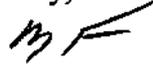
Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that

are currently known to ERC from 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, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Medical Research Institute unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



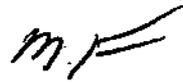
Michael Freund

cc: Chris Heptinstall, ERC  
Karen Evans, ERC

exposures exist from exposure to the products from the noticed party. Furthermore, as a result of the above, I have concluded that 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 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. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & 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: July 8, 2010



Michael Freund  
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On July 9, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2009 at Berkeley, California.

*MF*

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Michael Freund

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney of Glenn County  
PO Box 430  
Willows, CA 95988

District Attorney of Marin County  
3501 Civic Center Dr., Room 130  
San Rafael, CA 94903

District Attorney of Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93239

District Attorney of Mono County  
PO Box 617  
Bridgeport, CA 93517

District Attorney of Contra Costa  
County  
127 Ferry Street  
Martinez, CA 94553

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

District Attorney of Mariposa County  
PO Box 730  
Mariposa, CA 95338

District Attorney of Alpine County  
PO Box 248  
Markleeville, CA 96120

District Attorney of Humboldt County  
825 5<sup>th</sup> Street  
Eureka, CA 95501

District Attorney of Monterey County  
230 Church Street, Bdg. 2  
Salinas, CA 93901

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

District Attorney of Imperial County  
939 Main Street  
El Centro, CA 92243

District Attorney of Mendocino County  
PO Box 1000  
Ukiah, CA 95482

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

District Attorney of Lassen County  
220 S. Lassen St., Ste 8  
Susanville, CA 96130

District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney of Butte County  
25 County Center Drive  
Droville, CA 95965

District Attorney of Inyo County  
PO Drawer D  
Independence, CA 93526

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney of El Dorado County  
115 Main Street  
Placerville, CA 95667

District Attorney of Los Angeles County  
210 W. Temple Street, Room 345  
Los Angeles, CA 90012

District Attorney of Nevada County  
110 Union Street  
Nevada City, CA 95959-2503

District Attorney of Calaveras County  
91 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney of Madera County  
209 West Yosemite Ave.  
Madera, CA 93637

District Attorney of Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney of Fresno County  
220 Tulare Street, # 1000  
Fresno, CA 93721

District Attorney of Kern County  
1215 Truxtun Ave.  
Bakersfield, CA 93301

District Attorney of Modoc County  
204 S. Court Street  
Alturas, CA 96101-4020

District Attorney of Placer County  
2501 North Lake Blvd.  
Tahoe City, CA 96145

District Attorney of San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney of Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney of San Bernardino Cty  
316 N. Mountain View Ave.  
San Bernardino, CA 92415

District Attorney of Sierra County  
Courthouse, PO Box 457  
Donieville, CA 95936

District Attorney of Ventura County  
800 South Victoria Ave.  
Ventura, CA 93009

District Attorney of Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney of Santa Barbara  
County  
1105 Santa Barbara Street  
Santa Barbara, 93101

District Attorney of Tehama County  
PO Box 519  
Red Bluff, CA 96080

District Attorney of San Diego County  
330 West Broadway, Suite 1320  
San Diego, 92101

District Attorney of Siskiyou County  
PO Box 986  
Yreka, CA 96097

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501

District Attorney of Solano County  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

District Attorney of Trinity County  
PO Box 310  
11 Court Street  
Weaverville, CA 96093

District Attorney of San Francisco  
County  
950 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney of Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

District Attorney of Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney of Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney of Tulare County  
221 S. Mooney Ave., Room 224  
Visalia, CA 93291

District Attorney of San Joaquin County  
PO Box 990  
Stockton, CA 95201

District Attorney of Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney of Tuolumne County  
423 No. Washington Street  
Sonora, CA 95370

District attorney of San Luis Obispo  
County  
050 Monterey St., Room 450  
San Luis Obispo, CA 93408

District Attorney of Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

District Attorney of San Benito County  
19 Fourth Street, 2<sup>nd</sup> Floor  
Colliester, CA 95023

District Attorney of Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
PO Box 442  
Modesto, CA 95353

Los Angeles City Attorney's Office  
800 City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

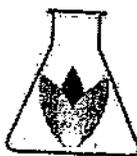
San Diego City Attorney's Office  
1200 3<sup>rd</sup> Ave. # 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

California Attorney General's Office  
Attn: Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
PO Box 70550  
Oakland, CA 94612

Karen A. Evans, General Counsel  
Environmental Research Center  
Law Office of Karen A. Evans.  
4218 Biona Place  
San Diego, CA 92116

Edward Byrd, President  
Medical Research Institute  
21411 Prairie Street  
Chatsworth, CA 91311



**Environmental Research Center**

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

November 5, 2010

**VIA CERTIFIED MAIL**

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
For Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("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 name of the Company covered by this Notice that violated Proposition 65 is:

**VMI Nutrition, Inc.**

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

MRI No2 Ripcuts Cellular Fat Burn Grape - **Lead**  
Medical Research Institute War Berry Attack - **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 as chemical known to cause cancer.

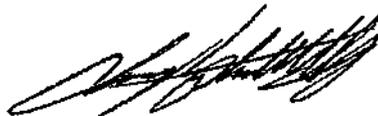
This letter is a Notice to VMI Nutrition, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving VMI Nutrition, Inc. currently known to ERC from the information now available. ERC 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, has been provided to the Noticed Company with a copy of this letter.

VMI Nutrition, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals 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 the identified chemicals. The method of warning should be a warning that appears on the product's label. VMI Nutrition, Inc. violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 VMI Nutrition, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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 chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall, Executive Director  
Environmental Research Center

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

November 5, 2010

Page 3

cc: Karen Evans

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to VMI Nutrition, Inc. 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's Notice of Proposition 65 Violations by VMI Nutrition, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged 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 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 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: November 5, 2010



---

Michael Freund  
Attorney for Environmental Research Center

**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

On November 5, 2010, 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 US Postal Service Office for delivery by Certified Mail:

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
For Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

On November 5, 2010, I 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 parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On November 5, 2010, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on November 5, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

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

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

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

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

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

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

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

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

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

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

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

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, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

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

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

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
November 5, 2010

Page 7

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

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

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

District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

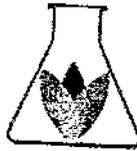
District Attorney, Yuba County  
215-Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113



**Environmental Research Center**

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

January 14, 2011

**VIA CERTIFIED MAIL**

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
for Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("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 name of the Company covered by this Notice that violated Proposition 65 is:

**VMI Nutrition, Inc.**

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

**MRI Black Powder Blue Raspberry 15g - 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 as chemical known to cause cancer.

This letter is a Notice to VMI Nutrition, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving VMI Nutrition, Inc. 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, has been provided to the Noticed Company with a copy of this letter.

VMI Nutrition, Inc. has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals 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 the identified chemicals. The method of warning should be a warning that appears on the product's label. VMI Nutrition, Inc. violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

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 VMI Nutrition, Inc. agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC'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 chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall, Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to VMI Nutrition, Inc. 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's Notice of Proposition 65 Violations by VMI Nutrition, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged 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 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 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: January 14, 2011

  
\_\_\_\_\_  
Michael Freund  
Attorney for Environmental Research Center

**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

On January 14, 2011, 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 US Postal Service Office for delivery by Certified Mail:

Current President or CEO  
VMI Nutrition, Inc.  
391 S. Orange Street  
Salt Lake City, UT 84104

Jeff Reynolds  
(VMI Nutrition, Inc.'s Registered Agent  
for Service of Process)  
391 S. Orange Street  
Salt Lake City, UT 84104

On January 14, 2011, I 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 parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On January 14, 2011, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 14, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

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

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

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

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

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

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

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

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

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

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

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

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, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

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

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

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

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

January 14, 2011

Page 6

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

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

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

District Attorney, Sonoma County  
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