

**CONFIDENTIAL SETTLEMENT AGREEMENT  
AND RELEASE OF CLAIMS**

This Confidential Settlement Agreement and Release of Claims (the "Agreement") is made and entered into by and between Environmental Research Center, a California non-profit corporation ("ERC"), a California corporation, on the one hand, and Amazon Herb Company ("Amazon Herb"), a Florida corporation, on the other hand. ERC and Amazon Herb are collectively referred to as "the Parties."

**RECITALS**

WHEREAS, ERC served, pursuant to Proposition 65, two Notices of Violation (dated October 22, 2010 and March 11, 2011) on the California Attorney General, other public entities and Amazon Herb, copies of which are attached hereto as Exhibit A; and

WHEREAS, Amazon Herb disputes that there exists any factual or legal basis for ERC's Notices of Violation, and specifically denies that any of its products require a Proposition 65 warning or otherwise cause harm to any person;

WHEREAS, no suit has been filed against Amazon Herb in regard to the matters raised in the Notices of Violation;

WHEREAS, prior to October 22, 2010 and up through January 6, 2012, Amazon Herb employed ten or more employees, but Amazon Herb contends that (1) it no longer employs ten or more employees, and (2) it is exempt from compliance with the provisions of Proposition 65 because it no longer employs ten or more employees;

WHEREAS, the Parties understand that the number of employees employed by Amazon Herb in the future may change, and that this Agreement is not intended to diminish or otherwise affect the rights, obligations, responsibilities or duties of the Parties under Proposition 65 for non-released future conduct if Proposition 65 becomes applicable to Amazon Herb in the future;

WHEREAS, the Parties have entered into this Agreement in order to settle, compromise and resolve disputed claims and thus avoid prolonged and costly litigation; and

WHEREAS, nothing in this Agreement, nor compliance with its terms, 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, suppliers, franchisees, 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; and

WHEREAS, this Agreement shall not be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum, except in an action seeking to enforce the terms of this Agreement or for purposes of issue or claim preclusion or any other similar defense.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

1. Dosage Modification.

1.1. Within thirty (30) days of the Effective Date of this Agreement or within five (5) business days after Amazon Herb is provided Notice (as set forth in Paragraph 9 below) that the condition set forth in Paragraph 3 below has been satisfied, whichever date is later, Amazon Herb shall modify the product label so the following dosage is conspicuously provided for the following four products sold to California:

- Fiberzon: From one scoop two times per day to one scoop per day;
- Fiberzon Mint: From one scoop two times per day to one scoop per day;
- Fiberzon Plus: From one to three capsules per day to one or two capsules per day; and
- Powershake: From two scoops two times per day to two scoops per day.

1.2. Even though Proposition 65 no longer applies to Amazon Herb's products as of

the date of this Agreement, Amazon Herb shall use its "best efforts" to keep lead levels as low as practically feasible in its products sold in California. "Best efforts" may include but not be limited to utilizing different suppliers providing products with lower lead levels, using different soil amendments such as lime and reducing dosage or any other method or practice deemed desirable by Amazon Herb to reduce lead levels.

2. Settlement Payment.

2.1. In full and final satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees, and costs, Amazon Herb shall make a total payment of \$40,000.00 in installments as set forth below, provided that the condition set forth in Paragraph 3 of this Agreement is satisfied. Except as set forth in the following sentence, the payments shall be in the form of a check with "Environmental Research Center" designated as the payee. The first installment payment shall consist of two (2) components: (a) a \$2,250 payment to OEHHA, as more fully described in paragraph 2.3 below, and (b) a \$10,000 payment to ERC; the next two installment payments shall each be in the amount of \$10,000; and the final installment payment shall be in the amount of \$7,750. The \$2,250 payment to OEHHA shall be paid within five (5) business days of Effective Date of this Agreement by delivering to ERC's counsel Michael Freund an Amazon Herb check in the amount of \$2,250 payable to OEHHA, which ERC's counsel shall promptly send to OEHHA along with a transmittal letter. ERC's counsel shall simultaneously send copies of the OEHHA check, the OEHAA transmittal letter and the fully executed copy of this Agreement to the Attorney General and to Amazon Herb's counsel Keesal, Young & Logan. The first \$10,000 payment shall be paid within thirty (30) days of the Effective Date of this Agreement to either (a) ERC if the \$2,250 OEHHA check has been cashed, or (b) to Keesal, Young & Logan's Client Trust Account if the \$2,250 OEHHA check has not been cashed. If the first \$10,000 payment is deposited into Keesal, Young & Logan's Client Trust Account, then

within five (5) business days after Amazon Herb's bank records indicate that the \$2,250 OEHHA check has been cashed, Keesal, Young & Logan shall pay to ERC the first \$10,000 payment, as well as any of the remaining installment payments that have been deposited into Keesal, Young & Logan's Client Trust Account. The second, third and fourth installment payments shall be paid within thirty (30), sixty (60) and ninety (90) days, respectively, from the date of payment of the first \$10,000 installment payment to either (a) ERC if the \$2,250 OEHHA check has been cashed, or (b) to Keesal, Young & Logan's Client Trust Account if the \$2,250 OEHHA check has not been cashed. In the event that any payment owed under this Agreement is not remitted on or before its due date, Amazon Herb shall be deemed to be in default of its payment obligations. ERC shall provide written notice to Amazon Herb of any default; if Amazon Herb fails to remedy the default within five (5) business days of its receipt of such notice, then all future payments due hereunder shall become immediately due and payable, with interest at the prevailing federal funds rate accruing on the unpaid balances due hereunder, beginning on the due date of the funds in default.

2.2. Other than in regard to the \$2,250 OEHHA component of the Settlement Payment, Amazon Herb undertakes no obligation of any kind in regard to (a) how ERC distributes the Settlement Payment as set forth below, (b) when ERC distributes the Settlement Payment as set forth below, or (c) the consequences of ERC's distribution of the Settlement Payment as set forth below. The Settlement Payments have been earmarked by ERC as stated in the following paragraph:

2.3. \$3,000.00, of which \$2,250.00 (75%) shall be payable to OEHHA and \$750.00 (25%) shall be payable to ERC. ERC's counsel shall forward the \$2,250.00 payment to OEHHA and send a copy of the transmittal letter to counsel for Amazon Herb, as well as to the Attorney General, within five (5) business days of Effective Date of this Agreement as set forth in

paragraph 2.1.

2.4. \$7,050.00 payable to ERC, which it intends to use for activities such as (1) investigating, researching and testing consumer products that may contain Proposition 65 listed chemicals; (2) awarding grants to California non-profit foundations/entities dedicated to public health; (3) funding the ERC Eco Scholarship Fund for high school students in California interested in pursuing an education in the field of environmental sciences; (4) funding ERC's Voluntary Compliance Program to work with companies not subject to Proposition 65 to reformulate their products to reduce potential consumer exposures; (5) funding ERC's RxY Program to assist various medical personnel to provide testing assistance to independent distributors of various products; (6) funding ERC's Got Lead? Program to assist consumers in testing products for lead; (7) ERC Cancer Scholarship Fund; (8) post-settlement monitoring of past Settlement and Releases; and (9) the continued enforcement of Proposition 65.

2.5. \$10,000.00 payable to ERC. ERC represents that this sum is attributable to reimbursement to ERC for reasonable investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this matter to Amazon Herb's attention, litigating and negotiating this Agreement.

2.6. \$15,750.00 payable to Michael Freund and \$4,200.00 payable to Karen Evans. ERC represents that these sums are attributable to reimbursement of ERC's attorney's fees.

2.7. The Settlement payment sums set forth above are being paid solely to compromise any potential claims and/or causes of action asserted by ERC against Amazon Herb and/or the Amazon Herb Releasees as set forth herein.

2.8. The Parties acknowledge that the payment and acceptance of the Settlement Payment sums and the execution of this Agreement as it relates to ERC's asserted and unasserted claims are the result of compromise and that this Agreement is entered into in good faith. The

Parties agree that this Agreement shall never be considered at any time or for any purpose as an admission of liability by Amazon Herb or by any of the other Amazon Herb Releasees. Amazon Herb specifically denies any liability to, or wrongful acts against, ERC or any other person, including any liability under Proposition 65.

3. Confidentiality and Service on California Attorney General for Approval/Non-Objection

3.1. This Agreement shall be confidential except that ERC shall serve a copy of this document to the California Attorney General for review and approval. ERC shall not post the results of the Agreement on its website in a way that specifically identifies Amazon Herb directly. The Agreement shall be conditioned upon either approval or non-objection by the Attorney General. The parties shall deem the cashing of the \$2,250 OEHHA check referenced in paragraphs 2.1 and 2.3 to constitute non-objection by the Attorney General. If the Attorney General objects to the Agreement and the Parties are unable to cure the objection, the Parties will revert to their *status quo ante* positions and ERC shall return to Amazon Herb any and all Settlement Payments made by from Amazon Herb pursuant to this Agreement within five (5) business days of the ERC's receipt of the Attorney General's objection .

4. Release

4.1. ERC hereby fully and finally releases, acquits, and discharges Amazon Herb and the "Amazon Herb Releasees" (which term is defined as "any and all of Amazon Herb's past, present and future heirs, executors, administrators, representatives, transferors, insurers, attorneys, successors, predecessors, affiliates, assignees, joint venturers, partners, parent or affiliated entities, subsidiaries, agents, employees, officers, directors, shareholders, owners, and alter egos") from any and all "Claims" related to the Notices of Violation attached hereto as Exhibit A ("Claims" is defined as "any and all claims, demands, actions, liabilities, damages, causes of action, losses, costs, expenses, compensation, contribution or indemnity, of any kind or

nature whatsoever, whether or not now known or unknown, suspected or claimed, matured or unmatured, fixed or contingent, which ERC ever had, now has, or may in the future claim to have against Amazon Herb and/or the Amazon Herb Releasees (whether directly or indirectly) from the beginning of time up through the Effective Date of this Agreement related to the Notices of Violation attached hereto as Exhibit A”).

4.2. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself and Amazon Herb and the Amazon Herb Releasees, of any alleged violation of Proposition 65 or its implementing regulations, and fully and finally resolves all Claims that have been or could have been asserted in this action against Amazon Herb and/or the Amazon Herb Releasees for failure to provide Proposition 65 warnings for the Covered Products regarding lead. ERC, on behalf of itself, hereby releases and discharges Amazon Herb and the Amazon Herb Releasees from any and all Claims asserted, or that could have been asserted, arising from or related to the alleged failure to provide Proposition 65 warnings for the Covered Products regarding lead up through the Effective Date of this Agreement.

4.3. Notwithstanding the foregoing, nothing contained herein shall release ERC or Amazon Herb from liability arising from any breach of any obligation set forth in this Agreement.

4.4. The Parties each acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to matters set forth in this Agreement. The Parties each further acknowledge that they each expressly agree to assume the risk of the possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts. The Parties further agree that this Agreement and all the terms and conditions hereof shall be binding upon and inure to the benefit of their respective heirs, legal representatives, successors and assigns. The Parties each acknowledge that there is a risk that subsequent to the execution of this

Agreement, they may discover, incur, or suffer from claims which were unknown or unanticipated at the time of this Agreement including, without limitation, unknown or unanticipated claims which arose from or are based upon the facts alleged in the Notices of Violation attached hereto as Exhibit A which, if known by them on the date this Agreement is being executed, may have affected materially the decision to execute this Agreement. The Parties acknowledge that they are assuming the risk of such unknown and unanticipated claims and agree that this Agreement applies thereto. The Parties expressly waive the benefits of section 1542 of the Civil Code of the State of California, which 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 debtor.”

4.4. The Parties acknowledge that they execute this Agreement voluntarily, with full knowledge of its significance, and with the express intention of extinguishing any and all Claims (known and unknown) as set forth in this Agreement as defined in Paragraph 4.1. The Parties represent and warrant that they have had the benefit of consultation with competent counsel of their choice in connection with the making of this Agreement and the general release contained herein.

5. Enforcement of Agreement

5.1. Notwithstanding any provisions of California Evidence Code §§ 1115-1128, this Agreement may be enforced by any party hereto by a motion under California Code of Civil Procedure § 664.6 or by any other procedure permitted by law.

5.2. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, claim or other proceeding which may be instituted, prosecuted or maintained by ERC in breach of this Agreement.

5.3. Should any provision of this Agreement be determined by any court to be illegal or



invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement.

6. Authority to Sign Agreement

6.1. Counsel for each of the Parties represent that they have fully explained to their clients the legal effect of this Agreement and of the terms set forth herein, and that the settlement and compromise stated herein is final and conclusive forthwith, and further represent that their clients have freely consented to and authorized this Agreement.

6.2. Each person signing on behalf of a corporate entity further represents that he/she is authorized to enter into this Agreement on behalf of such entity.

7. Entire Agreement

7.1. This Agreement constitutes the entire agreement relating to the matters set forth herein between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf which are not embodied in this Agreement, and that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement, or warranty.

7.2. All Parties agree that any amendment, supplement, modification, waiver, or termination of this Agreement shall not be valid or binding, unless executed in writing by all of the Parties to this Agreement.

8. Taxes

8.1. ERC may be required by Internal Revenue Code or other applicable law to report the Settlement Payment. ERC and its counsel are responsible for any tax obligation arising from

any payment to them and have the right and responsibility to calculate and pay any tax obligation or to claim any appropriate deductions attendant to said payment. It is understood and agreed by and between the Parties hereto that ERC and its counsel have not relied on any representations, expressed or implied, made by Amazon Herb as to any tax consequences of this payment, and ERC and its counsel hereby release Amazon Herb and the other Amazon Herb Releasees from any and all tax liability resulting from the Settlement Payment. ERC and its counsel will be responsible for the tax consequences of the Settlement Payment, and Amazon Herb undertakes no duties in that regard.

9. Notices

9.1. All notices required by this Agreement shall be sent by first-class, registered, or certified mail, or overnight delivery, to the following:

**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

Karen Evans  
Coordinating Counsel  
4218 Biona Place  
San Diego, CA 92116

**For Amazon Herb Company:**

John Easterling, Founder  
Amazon Herb Company  
~~4002 Jupiter Park Lane, Suite 1~~  
~~Jupiter, FL 33458~~

4455 N. Military Trail  
Jupiter, FL 33458



Ben Suter  
Keesal, Young & Logan  
450 Pacific Ave.  
San Francisco, CA 94133

10. Miscellaneous

10.1. This Agreement is made and entered into in the State of California and in all respects shall be interpreted, enforced, and governed under the laws of the State of California. Counsel for both Parties have cooperated in the drafting and preparation of this Agreement, therefore any ambiguity in this Agreement shall not be construed against any party.

10.2. This Agreement may be executed in counterparts, with the same effect as if all Parties have signed the same document, and each such executed counterpart shall be deemed to be an original instrument.

10.3. All covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successor and assigns of the Parties hereto.


10.4. The use of any masculine, feminine or non-gender specific pronoun in any provision of this Agreement, whether singular or plural, shall not be construed to limit that provision to a masculine, feminine or non-gender specific party.

10.5. The date of the last signature placed on this Agreement shall be known as the "Effective Date" for this Agreement.

IT IS SO AGREED AND STIPULATED

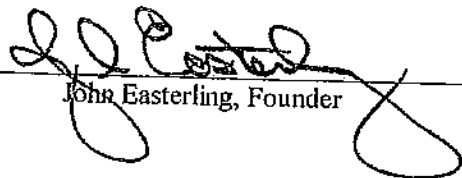
ENVIRONMENTAL RESEARCH CENTER

DATED: March 13, 2012

  
Chris Heppinstall, Executive Director  
AMAZON HERB COMPANY

AMAZON HERB COMPANY

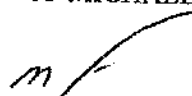
DATED: March 13, 2012

  
\_\_\_\_\_  
John Easterling, Founder

Approved as to form:

LAW OFFICE OF MICHAEL FREUND

DATED: March 14, 2012

  
\_\_\_\_\_  
Michael Freund  
Attorneys Environmental Research Center

KEESAL, YOUNG & LOGAN

DATED: March 13, 2012

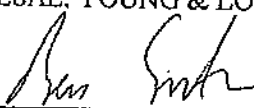
  
\_\_\_\_\_  
Ben Suter  
Attorneys for Amazon Herb Company

EXHIBIT A



## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

October 22, 2010

### VIA CERTIFIED MAIL

Current President or CEO  
Amazon Herb Company  
1002 Jupiter Park Lane, Suite 1  
Jupiter, FL 33458

Hackney, Robert C. Esq.  
Hackney Law PA  
(Amazon Herb Company's Registered  
Agent for Service of Process)  
108 Intracoastal Pointe Dr. #100  
Jupiter, fl 33477

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:

**Amazon Herb Company**

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

- Amazon Herb Co - Fiberzon - Lead
- Amazon Herb Co - Amazon Power Shake - 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.

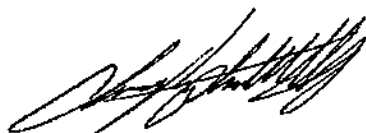
This letter is a Notice to Amazon Herb Company and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Amazon Herb Company currently known to ERC from the information now available. ERC 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.

Amazon Herb Company 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. Amazon Herb Company 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 Amazon Herb Company 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, Berkley, 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.*

October 22, 2010

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cc: Karen Evans

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Amazon Herb Company and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

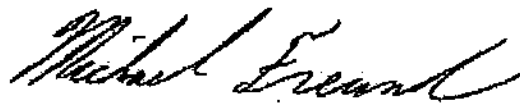


**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Amazon Herb Company**

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: October 22, 2010

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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 October 22, 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  
Amazon Herb Company  
1002 Jupiter Park Lane, Suite 1  
Jupiter, FL 33458

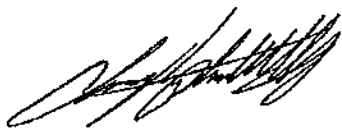
Hackney, Robert C. Esq.  
Hackney Law PA  
(Amazon Herb Company's Registered  
Agent for Service of Process)  
108 Intracoastal Pointe Dr. #100  
Jupiter, FL 33477

On October 22, 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 October 22, 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 October 22, 2010, in Fort Oglethorpe, Georgia.



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Chris Heptinstall

Service List

District Attorney, Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453
District Attorney, Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130
District Attorney, Butte County 25 County Center Drive Oroville, CA 95965	District Attorney, Los Angeles County 210 West Temple Street, Rm 345 Los Angeles, CA 90012
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637
District Attorney, Colusa County 547 Market Street Colusa, CA 95932	District Attorney, Marin County 3501 Civic Center, Room 130 San Rafael, CA 94903
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338
District Attorney, Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 2222 M Street Merced, CA 95340
District Attorney, Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517
District Attorney, Humboldt County 825 5th Street Eureka, CA 95501	District Attorney, Monterey County 230 Church Street, Bldg 2 Salinas, CA 93901
District Attorney, Imperial County 939 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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.*

October 22, 2010

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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

## **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

### **WHAT DOES PROPOSITION 65 REQUIRE?**

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.  
Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.



## Environmental Research Center

1011 PAUL AVENUE, SUITE 100  
DUBLIN, CA 94568  
(916) 308-2000

March 11, 2011

### VIA CERTIFIED MAIL

Current President or CEO  
Amazon Herb Company  
1002 Jupiter Park Lane, Suite 1  
Jupiter, FL 33458

Hackney, Robert C. Esq.  
Hackney Law PA  
(Amazon Herb Company's Registered  
Agent for Service of Process)  
108 Intracoastal Pointe Dr. #100  
Jupiter, FL 33477

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

### VIA PRIORITY MAIL

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

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

Dear Addressees:

I 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:

**Amazon Herb Company**

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

**Amazon Herb Co. Fiberzon Plus 90 Vegizons – Lead**

**Amazon Herb Co. Fiberzon Internal Cleansing Program Refreshing Rainforest Mint 500 Grams - 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.

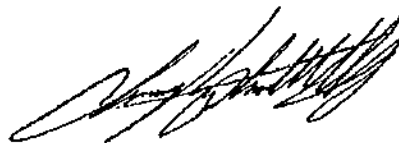
This letter is a Notice to Amazon Herb Company and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Amazon Herb Company currently known to ERC from the information now available. ERC 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.

Amazon Herb Company 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. Amazon Herb Company 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 Amazon Herb Company 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 Amazon Herb Company 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 Amazon Herb Company**

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.



---

Michael Freund  
Attorney for Environmental Research Center

Dated: March 11, 2011

**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 March 11, 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  
Amazon Herb Company  
1002 Jupiter Park Lane, Suite 1  
Jupiter, FL 33458

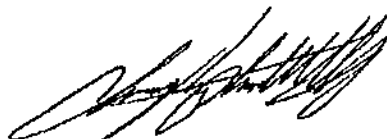
Hackney, Robert C. Esq.  
Hackney Law PA  
(Amazon Herb Company's Registered  
Agent for Service of Process)  
108 Intracoastal Pointe Dr. #100  
Jupiter, FL 33477

On March 11, 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 March 11, 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 March 11, 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.*

March 11, 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  
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1525 Court Street, Third Floor  
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District Attorney, Trinity County  
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District Attorney, Tulare County  
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San Francisco, CA 94102

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San Jose, CA 95113

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