

Michael Freund SBN (99687)  
Law Office of Michael Freund  
1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

Attorney for Plaintiff Environmental Research Center

Irwin Feinberg (SBN 89192)  
Feinberg, Mindel, Brandt & Klein LLP  
12424 Wilshire Blvd., 9<sup>th</sup> Floor  
Los Angeles, CA 90025  
Telephone: (310) 447-8675  
Facsimile: (310) 447-8678

Attorneys for Defendant Morinda Holdings, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN FRANCISCO**

**ENVIRONMENTAL RESEARCH CENTER,  
a California non-profit corporation**

**Plaintiff,**

**v.**

**MORINDA HOLDINGS, INC. and  
DOES 1-100**

**Defendants.**

---

**Case No. CGC-11-508698**

**[PROPOSED] AMENDED STIPULATED  
CONSENT JUDGMENT AND  
[PROPOSED] ORDER**

[Health & Safety Code Section 25249.5  
et seq.]

ACTION FILED: March 2, 2011  
TRIAL DATE: June 4, 2012  
HEARING DATE: April 17, 2012  
DEPT.: 302  
TIME: 9:30 a.m.

**1. INTRODUCTION**

1.1 On March 2, 2011, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a 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 Defendant

Morinda Holdings, Inc. (“Morinda”). On November 28, 2011, ERC filed a First Amended Complaint for Injunctive and Declaratory Relief and Civil Penalties against Morinda. In these actions, ERC claims that products manufactured and distributed by Morinda 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. These products are Seabuck-7, Mangoxan, Pft Brands Inc Goji Zen, Tahitian Noni International Inc. Tahiti Trim Plan 40 Appetite Suppressant, Tahitian Noni International Inc. Fiber Blend and Tahitian Noni International Inc. Tahiti Trim Plan 40 Complete Shake Vanilla (the “Covered Products”). ERC and Morinda 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 Morinda is a business entity that employs ten or more persons. Morinda arranges the manufacture, distribution and sale of the Covered Products.

1.4 The Complaint and First Amended Complaint are based on allegations contained in Notices of Violation dated November 23, 2010 and January 14, 2011 that were served on the California Attorney General, other public enforcers and Morinda. 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 Morinda with regard to the Covered Products or the alleged violations.

1.5 ERC's Notices of Violation, the Complaint and First Amended Complaint 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. Morinda denies all material allegations contained in the Notices of Violation, Complaint and First Amended Complaint and specifically denies that the Covered Products require a Proposition 65 warning or otherwise cause harm to any person.

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 receiving ERC's Notices of Violation, Morinda has taken steps to reduce exposures of lead to consumers using the six Covered Products. Seabuck 7 was discontinued in

June of 2011. Mangoxan was reformulated in June 2011 to levels below 0.5 ug/day. Future Mangoxan manufacturing will be done with the new formula. The other four Covered Products are in the process of being phased out, and to the extent that such products are still sold prior to discontinuance, Proposition 65 warning labels as set forth in Paragraph 3 will be conspicuously affixed or printed upon the product's label of any the Covered Products.

## **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 First Amended Complaint and personal jurisdiction over Morinda as to the acts alleged in the Complaint and First Amended Complaint, that venue is proper in San Francisco 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, the Complaint and First Amended Complaint.

## **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

3.1 On or after the Effective Date, Morinda 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 unless such Covered Product complies with the warning requirement set forth in Section 3.2 below or this Court or the California Office of Environmental Health Hazard Assessment (OEHHA) determines that no such warning for these Covered Products is required.

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

**WARNING:** 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 3.4.

3.3 The warning shall be prominently fixed 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 Testing**

(a) Once a year, on or before the anniversary of the entry of the Consent Judgment, Morinda shall test, or cause to be tested, four (4) randomly selected samples of each Covered Product (in the form intended for sale to California, manufactured after the date of the prior year’s random test) ) for lead content. Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) and closed-vessel, microwave-assisted digestion employing high-purity reagents or any other testing method subsequently agreed upon in writing by the Parties. Morinda shall provide any test results to ERC within thirty days of receipt of such test results. Morinda shall retain all test results for a period of four years from the date of each respective test. All testing pursuant to this Consent Judgment shall be performed by a laboratory

certified by the California Environmental Laboratory Accreditation Program or a laboratory that is registered with the United States Food & Drug Administration.

(b) If tests conducted pursuant to this Consent Judgment demonstrate that no warning is required for a Covered Product during each of three (3) consecutive years, (when using the maximum daily dose recommended on the label for the Covered Product) then the testing requirements of this Section 3.3 are no longer required as to that Covered Product. However, if after the three (3) year period, Morinda changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, Morinda shall test that Covered Product at least once after such change is made.

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

4.1 In full and final satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorneys' fees, and costs, Morinda shall make a total payment of \$70,000.00, payable to Michael Freund Attorney Client Trust Fund (counsel for ERC), within ten (10) business days of receiving the Notice of Entry of this Consent Judgment. Michael Freund shall be responsible for allocating and sending the payments to the other recipients as follows:

4.2 \$7,300.00 as civil penalties pursuant to California Health & Safety Code section 25249.7(b)(1). Of this amount, \$5,475.00 shall be payable to OEHHA, and \$1,825.00 shall be payable to ERC. Cal. Health & Safety Code §§ 25249.12(c)(1) & (d). ERC's counsel shall forward the civil penalty payment to OEHHA, and send a copy of the transmittal letter to counsel for Morinda.

4.3 \$18,525.00 in lieu of further civil penalties, payable to ERC, for the following projects and activities: (1) awarding grants to California non-profit organizations dedicated to public health and environmental groups whose activities are consistent with the mission of ERC as set forth in the Addendum; (2) funding ERC's Voluntary Compliance Program ("VCP") to work with companies not subject to Proposition 65 to reduce lead exposures from their products;

(3) funding ERC's Got Lead? Program to assist consumers in testing products for lead; and (4) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65. In deciding the grantee proposals or distributions, ERC takes into consideration several factors including: (a) the nexus between the alleged harm in the underlying case(s), and the grant program work; (b) the potential for toxics reduction, prevention, remediation or education benefits to California residents from the proposal; (c) the budget requirements of the proposed grantee and the alternate funding sources available to it for its project; and (d) ERC's assessment of the grantee's chances for success in its program work.

4.4 \$15,000.00 payable to ERC, as 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 Morinda's attention, litigating and negotiating this settlement in the public interest.

4.5 \$23,175.0000 payable to Michael Freund and \$6,000.00 payable to Karen Evans as reimbursement of ERC's attorneys' fees.

## **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, ENFORCEMENT OF CONSENT JUDGMENT**

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

6.2 Only after it complies with Section 10 below, 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 attorneys' fees and costs associated with such motion or application.

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

This Consent Judgment shall apply to, be binding upon and benefit the Parties, and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other entities in the distribution chain of any Covered Product, the predecessors, successors and assigns of any of them, and ERC on its own behalf and the public interest as set forth in Paragraph 8.

## **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 Morinda, 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 Morinda for failure to provide Proposition 65 warnings for the Covered Products regarding lead. ERC, on behalf of itself, and in the public interest, hereby releases and discharges Morinda and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other entities in the distribution chain 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 Notice of Violation or the Complaint and Amended Complaint, including



without limitation any and all claims concerning exposure of any person to lead in the Covered Products.

8.3 Compliance with the terms of this Consent Judgment shall constitute compliance by the Released Parties with Proposition 65 with respect to alleged exposures to lead contained in the Covered Products.

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 Notice 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. ERC has full knowledge of the contents of California Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waives California Civil Code section 1542 as to any such unknown claims. California 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 California Civil Code section 1542.

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

## **9. CONSTRUCTION OF CONSENT JUDGMENT, SEVERABILITY**

9.1 The terms and conditions of this Consent Judgment have been reviewed by the respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with its counsel. In any subsequent interpretation or

construction of this Consent Judgment, the terms and conditions shall not be construed against any Party.

9.2 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. NOTICE AND CURE**

10.1 No motion to enforce this Consent Judgment or application to show cause may be filed by ERC, unless ERC notifies Morinda of the specific acts alleged to breach this Consent Judgment at least forty-five (45) days before filing and serving any such motion or application. Any notice to Morinda must contain (1) the name of the product; (2) the lead content of the product, with a copy of the analytical results and description of the testing methodology; (3) specific dates when the product was sold in California; (4) the store or other place at which the product was available for sale to California consumers; and (5) any other evidence or other support for the allegations in the notice.

10.2 Within thirty (30) days of receiving the notice described in Section 10.1, Morinda shall either (1) withdraw the product from sale in California, (2) provide the warning described in Section 3.2 for the product, or (3) refute the information provided under Section 10.1. Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 6 of this Consent Judgment.

## **11. 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.

## **12. PROVISION OF NOTICE**

All notices required by this Consent Judgment 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 Morinda:**

Irwin Feinberg  
Feinberg, Mindel, Brandt & Klein LLP  
12424 Wilshire Blvd., 9<sup>th</sup> Floor  
Los Angeles, CA 90025  
Telephone: (310) 447-8675  
Facsimile: (310) 447-8678

Richard C. Rife  
Office of General Counsel  
Morinda Holdings, Inc.  
333 River Park Drive  
Provo, UT 84604

**13. COURT APPROVAL**

13.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be void and have no force or effect.

13.2 ERC shall comply with California Health & Safety Code section 25249.7(f) and with Title 11 of the California Code Regulations, section 3003.

**14. EXECUTION AND COUNTERPARTS**

This Stipulated Consent Judgment may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or pdf signature shall be construed as valid as the original signature.

**15. ENTIRE AGREEMENT, AUTHORIZATION**

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

15.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment, to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to bind that Party to this Consent Judgment. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each Party shall bear its own fees and costs.

**IT IS SO STIPULATED:**

**ENVIRONMENTAL RESEARCH CENTER**

\_\_\_\_\_  
Chris Heptinstall, Executive Director

Dated: \_\_\_\_\_

**MORINDA HOLDINGS, INC.**

  
\_\_\_\_\_  
Richard C. Rife, General Counsel

Dated: April 23, 2012

**APPROVED AS TO FORM:**

**LAW OFFICE OF MICHAEL FREUND**

\_\_\_\_\_  
Michael Freund, Counsel for ERC

Dated: \_\_\_\_\_

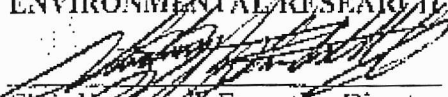
**15. ENTIRE AGREEMENT, AUTHORIZATION**

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

15.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment, to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to bind that Party to this Consent Judgment. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each Party shall bear its own fees and costs.

**IT IS SO STIPULATED:**

**ENVIRONMENTAL RESEARCH CENTER**

  
Chris Hepburn, Executive Director

Dated: 4/17/12

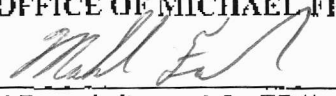
**MORINDA HOLDINGS, INC.**

\_\_\_\_\_  
Richard C. Rife, General Counsel

Dated: \_\_\_\_\_

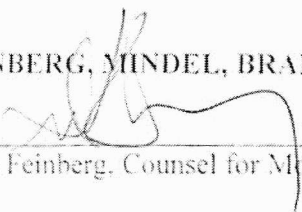
**APPROVED AS TO FORM:**

**LAW OFFICE OF MICHAEL FREUND**

  
Michael Freund, Counsel for ERC

Dated: 4/24/12

FEINBERG, MINDEL, BRANDT & KLEIN, LLP

  
Irwin Feinberg, Counsel for Morinda

Dated: April 24 2012

JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

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

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

### **Addendum**

The grants to third party California non-profit organizations referenced in Section 4.3 shall be made to the following:

Environmental Working Group ([www.ewg.org](http://www.ewg.org))

The Breast Cancer Fund ([www.breastcancerfund.org](http://www.breastcancerfund.org))

These funds shall be used only for the purposes of “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 shall ensure that all funds will be disbursed and used in accordance with Proposition 65’s statutory purposes and ERC’s mission statement, articles of incorporation, and by laws within six months of receipt.



**Environmental Research Center**

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

November 23, 2010

**VIA CERTIFIED MAIL**

Current President or CEO  
Morinda Holdings, Inc.  
333 River Park Drive  
Provo, UT 84604

Richard C. Rife  
(Morinda Holdings, Inc.'s Registered Agent  
For Service of Process)  
333 River Park Drive  
Provo, UT 84604.

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:

**Morinda Holdings, Inc.**

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

**Seabuck-7 - Lead**  
**Mango-xan - Lead**  
**Pft Brands Inc Goji Zen - Lead**

**EXHIBIT A**



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.

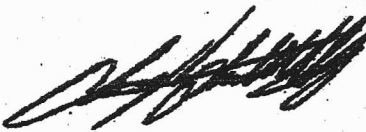
This letter is a Notice to Morinda Holdings, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Morinda Holdings, Inc. currently known to ERC from the information now available.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

Morinda Holdings, 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. Morinda Holdings, 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 Morinda Holdings, 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 Morinda Holdings, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

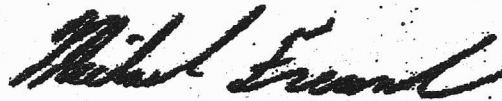
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Morinda Holdings, 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 23, 2010



---

Michael Freund  
Attorney for Environmental Research Center

November 23, 2010

Page 4

**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 23, 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  
Morinda Holdings, Inc.  
333 River Park Drive  
Provo, UT 84604

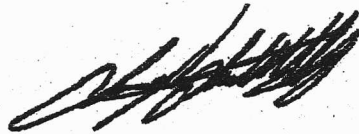
Richard C. Rife  
(Morinda Holdings, Inc.'s Registered Agent  
For Service of Process)  
333 River Park Drive  
Provo, UT 84604

On November 23, 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 23, 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 23, 2010, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

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

November 23, 2010

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 95811

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  
Downsville, 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  
Morinda Holdings, Inc.  
333 River Park Drive  
Provo, UT 84604

Richard C. Rife  
(Morinda Holdings, Inc.'s Registered Agent  
For Service of Process)  
333 River Park Drive  
Provo, UT 84604

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:

**Morinda Holdings, Inc.**

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

**Tahitian Noni International Inc. Tahiti Trim Plan 40 Appetite Suppressant 90 Capsules - Lead**  
**Tahitian Noni International Inc. Fiber Blend (390 g) - Lead**  
**Tahitian Noni International Inc. Tahiti Trim Plan 40 Complete Shake Vanilla (435 g) - Lead**

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
January 14, 2011  
Page 2

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.

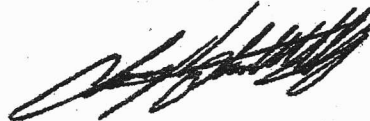
This letter is a Notice to Morinda Holdings, Inc. and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Morinda Holdings, Inc. currently known to ERC from the information now available.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

Morinda Holdings, 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. Morinda Holdings, 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 Morinda Holdings, 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 Morinda Holdings, 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 Morinda Holdings, 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

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 Truxum 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  
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