

1 TANYA A. GULESSERIAN (CBN 198640)  
2 CHRISTINA M. CARO (CBN 250797)  
3 ADAMS BROADWELL JOSEPH & CARDOZO  
4 601 Gateway Boulevard, Suite 1000  
5 South San Francisco, CA 94080-7037  
6 Telephone: (650) 589-1660  
7 Facsimile: (650) 589-5062  
8 Email: tgulesserian@adamsbroadwell.com  
9 ccaro@adamsbroadwell.com

10 Attorneys for Plaintiff  
11 ENVIRONMENTAL RESEARCH CENTER, INC.

12 TRENTON H. NORRIS (CBN 164781)  
13 SARAH ESMAILI (CBN 206053)  
14 ARNOLD & PORTER KAYE SCHOLER LLP  
15 Three Embarcadero Center, 10th Floor  
16 San Francisco, California 94111-4024  
17 Telephone: (415) 471-3100  
18 Facsimile: (415) 415-3400  
19 Email: trent.norris@apks.com  
20 sarah.esmaili@apks.com

21 Attorneys for Defendant  
22 ORGAIN, INC.

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
24 COUNTY OF ALAMEDA

25 ENVIRONMENTAL RESEARCH CENTER,  
26 INC. a non-profit California corporation,

27 Plaintiff,

28 v.

ORGAIN, INC., a California corporation;

Defendants.

CASE NO. RG16833858

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 5, 2016

Trial Date: None set

**1. INTRODUCTION**

**1.1** On October 5, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a

1 Complaint for Injunctive Relief and Civil Penalties pursuant to the provisions of California Health  
2 and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against ORGAIN, INC., a California  
3 corporation (“ORGAIN” or “Defendant”). ERC thereafter filed a First Amended Complaint  
4 (“Complaint”) in the action. In this action, ERC alleges that a number of products manufactured,  
5 distributed or sold by ORGAIN contain lead, a chemical listed under Proposition 65 as a carcinogen  
6 and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65  
7 warning. These products, as identified in ERC’s October 16, 2015 and October 12, 2016 Notices of  
8 Violation (“Notices”) and named in ERC’s Complaint, hereinafter referred to individually as a  
9 “Covered Product” or collectively as the “Covered Products,” are the following:

- 10 • Orgain Inc. Vegan Nutritional Shake Sweet Vanilla Bean
- 11 • Orgain Inc. Vegan Nutritional Shake Smooth Chocolate
- 12 • Orgain Inc. Organic Protein Plant Based Powder Creamy Chocolate Fudge
- 13 • Orgain Inc. Organic Protein Plant Based Powder Vanilla Bean
- 14 • Orgain Inc. Organic Meal All-In-One Nutrition Creamy Chocolate Fudge
- 15 • Orgain Inc. Organic Meal All-In-One Nutrition Vanilla Bean
- 16 • Orgain Inc. Organic Hydration Orange
- 17 • Orgain Inc. Organic Hydration Lemon Ice
- 18 • Orgain Inc. Organic Hydration Coconut
- 19 • Orgain Inc. Organic Hydration Berry Punch
- 20 • Orgain Inc. Organic Protein Almond Milk Unsweetened Vanilla
- 21 • Orgain Inc. Organic Protein Almond Milk Lightly Sweetened Vanilla
- 22 • Orgain Inc. Grass Fed Protein Nutritional Protein Shake Creamy Chocolate Fudge
- 23 • Orgain Inc. Grass Fed Whey Protein Powder Creamy Chocolate Fudge
- 24 • Orgain Inc. Organic Slim Plant Based Protein Powder Vanilla
- 25 • Orgain Inc. Organic Slim Plant Based Protein Powder Chocolate
- 26 • Orgain Inc. Organic Superfoods All-In-One Super Nutrition Berry Flavor
- 27 • Orgain Inc. Organic Superfoods All-In-One Super Nutrition Original Flavor
- 28 • Orgain Inc. Organic Protein Nutritional Protein Shake Creamy Chocolate Fudge

1 Additionally, ERC alleges that two of the products (Organic Slim Plant Based Protein Powder  
2 Chocolate and Organic Protein Nutritional Protein Shake Creamy Chocolate Fudge) contain  
3 cadmium at a level requiring a Proposition 65 warning. A Covered Product for which only lead is  
4 identified in any of the Notices is not required to comply with any injunctive terms relating to  
5 cadmium in Section 3. A Covered Product for which only cadmium is identified in any of the Notices  
6 is not required to comply with any injunctive terms relating to lead in Section 3. This section in no  
7 way diminishes ORAGAIN’s requirement to comply with Proposition 65.

8 **1.2** ERC and ORGAIN are hereinafter referred to individually as a “Party” or  
9 collectively as the “Parties.”

10 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
11 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
12 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and  
13 encouraging corporate responsibility.

14 **1.4** ORGAIN has employed ten or more persons at all times relevant to this action, and it  
15 qualifies as a “person in the course of business” within the meaning of Proposition 65. ORGAIN  
16 manufactures, distributes, and/or sells the Covered Products, as described in Paragraph 1.1 above.

17 **1.5** The Complaint is based on allegations contained in ERC’s Notices dated October 16,  
18 2015 and October 12, 2016 that were served on the California Attorney General, other public  
19 enforcers, and Defendant. True and correct copies of the Notices are attached as Exhibit A and are  
20 hereby incorporated by reference. More than 60 days have passed since the Notices were mailed  
21 and uploaded to the Attorney General’s website, and no designated governmental entity has filed a  
22 complaint against Defendant with regard to the Covered Products or the alleged violations described  
23 in the Notices.

24 **1.6** The Notices and Complaint allege that use of the Covered Products exposes persons  
25 in California to lead and/or cadmium without first providing clear and reasonable warnings in  
26 violation of California Health and Safety Code section 25249.6. ORGAIN denies all material  
27 allegations contained in the Notices and the Complaint, and ORGAIN maintains that it has complied  
28 with Proposition 65 with respect to the Covered Products.

1           **1.7**     The Parties have entered into this Stipulated Consent Judgment (“Consent  
2 Judgment”) in order to settle, compromise, and resolve disputed claims and thus avoid prolonged  
3 and costly litigation. Nothing in this Consent Judgment shall constitute or be construed as an  
4 admission by any of the Parties, or by any of their respective officers, directors, shareholders,  
5 employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers,  
6 suppliers, distributors, wholesalers, or retailers. Except for the representations made above, nothing  
7 in this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law,  
8 or violation of law, nor shall compliance with this Consent Judgment be construed as an admission  
9 by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose.

10           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
11 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
12 other or future legal proceeding unrelated to these proceedings.

13           **1.9**     The Execution Date is the date on which it is fully signed by the Parties. The  
14 Effective Date of this Consent Judgment is the date on which it is entered as a judgment by this  
15 Court. The Compliance Date is ten months after the Effective Date.

## 16           **2.     JURISDICTION AND VENUE**

17           For purposes of this Consent Judgment and any further court action that may become necessary  
18 to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction  
19 over the allegations of violations contained in the Complaint, personal jurisdiction over ORGAIN as to  
20 the acts alleged in the Complaint, that venue is proper in Alameda County, and that this Court has  
21 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through and  
22 including the Compliance Date which were or could have been asserted in this action based on the facts  
23 alleged in the Notices and Complaint.

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

25           **3.1**     Any Covered Products that are manufactured on and after the Compliance Date that  
26 ORGAIN thereafter “Distributes into the State of California” or directly sells in the State of  
27 California shall either qualify as a Reformulated Covered Product under Section 3.3 or comply with  
28 the warning requirements of Section 3.2.

1                   **3.1.1** As used in this Consent Judgment, the term “Distributes into the State of  
2 California” shall mean to directly ship a Covered Product into California for sale in California or to  
3 sell a Covered Product to a distributor that ORGAIN knows will sell the Covered Product in  
4 California.

5                   **3.1.2** For purposes of this Consent Judgment, the daily lead exposure level (“Daily  
6 Lead Level”) and the daily cadmium exposure levels (“Daily Cadmium Level”) shall be calculated  
7 pursuant to California Health and Safety Code sections 25249.6, 25249.10, and 27 Cal. Code  
8 Regulations sections 25701, 25703, 25705, 25721, 25801, 25803, 25805, and 25821 effective at the  
9 time of the Execution Date, except as provided by the modification provision under Section 5.2.

10                   **3.2 Clear and Reasonable Warnings**

11                   **3.2.1** If ORGAIN is required to provide a warning pursuant to Section 3.1, one of  
12 the following three warning statements shall be utilized (the “Warning”).

13                   Option 1:

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

16                   Option 2:

17                   **WARNING:** Consuming this product can expose you to chemicals  
18 including lead [and cadmium], which is known to the State of California  
19 to cause [cancer and] birth defects or other reproductive harm. For more  
20 information, go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21                   Option 3:

22                    **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

23                   **3.2.2** ORGAIN shall use the phrase “cancer and” in the Warning for a Covered  
24 Product only if a Covered Product contains more than 15 micrograms of lead as determined pursuant  
25 to Section 3.4. The Warning shall be securely affixed to or printed upon the container or label of each  
26 Covered Product. The Warning set forth under Option 2 shall appropriately reflect whether there is  
27 lead, cadmium, or both chemicals present above the Daily Lead Level and Daily Cadmium Level in  
28 each of the Covered Products. The Warning shall be at least the same size as the largest of any other  
health or safety warnings appearing on the label or container of the Covered Product packaging and

1 the word “**WARNING**” shall be in all capital letters and in bold print. No other statements discussing  
2 Proposition 65, lead, or cadmium that contradict or conflict with the warning shall accompany the  
3 Warning on the container or label. For the Warning set forth under Option 3, the pictogram shall be in  
4 yellow with a black exclamation mark; provided however, the pictogram may be in white instead of  
5 yellow if the Covered Product label does not contain the color yellow. The pictogram shall be placed  
6 to the left of the text of the Warning, in a size no smaller than the height of the word “WARNING.”

7 ORGAIN must display the Warning with such conspicuousness, as compared with other words,  
8 statements, design of the label or container, as applicable, to render the Warning likely to be read and  
9 understood by an ordinary individual under customary conditions of purchase or use of the product.

### 10 **3.3 Reformulated Covered Products**

11 **3.3.1** A Reformulated Covered Product is one for which the Daily Lead  
12 Level does not exceed 0.5 micrograms (“mcg”) of lead per day after subtracting the amount of lead  
13 deemed to be “naturally occurring” for each ingredient listed in Table 3.3.3 below, for Covered  
14 Products that contain lead, and as determined under Section 3.4. A Reformulated Covered Product is  
15 one for which the Daily Cadmium Level does not exceed 4.1 mcg of cadmium per day, for Covered  
16 Products that contain cadmium, as determined under Section 3.4.

17 **3.3.2** The amount of lead deemed “naturally occurring” in each of the  
18 Covered Products is the sum of the amounts of “naturally occurring” lead supplied by the quantity of  
19 each ingredient listed in Table 3.3.3 that is present in each Covered Product. For each ingredient listed  
20 in Table 3.3.3, the amount of lead deemed “naturally occurring” is listed in Table 3.3.3 in micrograms  
21 of “naturally occurring” lead per gram of the ingredient that is contained in the Covered Product.

22 **Table 3.3.3**

<b>Ingredient</b>	<b>Amount of lead (Pb) per gram of ingredient deemed naturally occurring</b>
Calcium (elemental)	0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of magnesium hydroxide

Zinc Gluconate	0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	1.1 mcg Pb per gram of potassium chloride
Cocoa powder	1.0 mcg Pb per gram of cocoa powder

### 3.4 Testing and Quality Control Methodology

#### 3.4.1 Prior to ORGAIN's first distribution or sale of Covered Products

manufactured after the Compliance Date, and at least once a year thereafter for three consecutive years, ORGAIN shall arrange for lead and cadmium testing of five (5) randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user that ORGAIN sells in California or Distributes into California. The testing requirement does not apply to any of the Covered Products for which ORGAIN has provided the warning specified in Section 3.2. If tests conducted pursuant to this Section demonstrate that no warning is required for a Covered Product during each of four consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the four-year testing period, ORGAIN changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products such that the change or reformulation is reasonably likely to affect lead and cadmium levels materially, then ORGAIN shall test that Covered Product annually for at least two (2) consecutive years after such change or reformulation is made.

#### 3.4.2 For purposes of determining whether a Covered Product qualifies as a

Reformulated Covered Product, the arithmetic mean of the five (5) randomly selected samples of the Covered Products will be controlling.

#### 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a

laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently agreed to in writing by the Parties.

1                   **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
2 independent third party laboratory certified by the California Environmental Laboratory  
3 Accreditation Program or an independent third-party laboratory that is registered with the United  
4 States Food & Drug Administration.

5                   **3.4.5** Nothing in this Consent Judgment shall limit ORGAIN’s ability to conduct,  
6 or require that others conduct, additional testing of the Covered Products, including the raw  
7 materials used in their manufacture.

8                   **3.4.6** ORGAIN shall retain the laboratory reports of testing performed under this  
9 Section 3.4 period of at least five years from the testing date. If there is an allegation that a Covered  
10 Product is in violation of this Consent Judgment, ERC may make a written request to ORGAIN  
11 delivered to the address set forth in Section 11 for copies of laboratory reports with results of lead  
12 and cadmium testing for that Covered Product performed under Section 3.4. In response, within  
13 thirty (30) days of receipt of ERC’s written request, ORGAIN shall provide such laboratory reports  
14 to ERC.

15                   **4. SETTLEMENT PAYMENT**

16                   **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,  
17 attorney’s fees, and costs concerning the Notices and the Complaint, ORGAIN shall make a total  
18 payment of \$250,000.00 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date  
19 (“Due Date”). ORGAIN shall make this payment by wire transfer to ERC’s escrow account, for  
20 which ERC will give ORGAIN the necessary account information. The Total Settlement Amount  
21 shall be apportioned as follows:

22                   **4.2** \$66,854.34 shall be considered a civil penalty pursuant to California Health and  
23 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$50,140.75) of the civil penalty to the Office of  
24 Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe Drinking Water and  
25 Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC  
26 will retain the remaining 25% (\$16,713.59) of the civil penalty.

27                   **4.3** \$14,227.72 shall be distributed to ERC as reimbursement to ERC for reasonable  
28 costs incurred in bringing this action.



1           **4.4**     \$50,140.67 shall be distributed to ERC as an Additional Settlement Payment (“ASP”),  
2 pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC  
3 will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant  
4 in this matter. These activities are detailed below and support ERC’s overarching goal of reducing  
5 and/or eliminating hazardous and toxic chemicals in dietary supplement products in California.  
6 ERC’s activities have had, and will continue to have, a direct and primary effect within the State of  
7 California because California consumers will be benefitted by the reduction and/or elimination of  
8 exposure to lead and/or cadmium in dietary supplements and/or by providing clear and reasonable  
9 warnings to California consumers prior to ingestion of the products.

10           Based on a review of past years’ actual budgets, ERC is providing the following list of  
11 activities ERC engages in to protect California consumers through Proposition 65 citizen  
12 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities:

- 13 (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary supplement  
14 products that may contain lead and/or cadmium and are sold to California consumers. This work  
15 includes continued monitoring and enforcement of past consent judgments and settlements to ensure  
16 companies are in compliance with their obligations thereunder, with a specific focus on those  
17 judgments and settlements concerning lead and/or cadmium. This work also includes investigation of  
18 new companies that ERC does not obtain any recovery through settlement or judgment; (2)  
19 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s Voluntary Compliance  
20 Program by acquiring products from companies, developing and maintaining a case file, testing  
21 products from these companies, providing the test results and supporting documentation to the  
22 companies, and offering guidance in warning or implementing a self-testing program for lead and/or  
23 cadmium in dietary supplement products; and (3) “GOT LEAD” PROGRAM (up to 5%):  
24 maintaining ERC’s “Got Lead?” Program which reduces the numbers of contaminated products that  
25 reach California consumers by providing access to free testing for lead in dietary supplement products  
26 (Products submitted to the program are screened for ingredients which are suspected to be  
27 contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory for  
28 testing, and the results shared with the consumer that submitted the product).

1 ERC shall be fully accountable in that it will maintain adequate records to document and will  
2 be able to demonstrate how the ASP funds will be spent and can assure that the funds are being spent  
3 only for the proper, designated purposes described in this Consent Judgment. ERC shall provide the  
4 Attorney General, within thirty days of any request, copies of documentation demonstrating how such  
5 funds have been spent.

6 **4.5** \$66,405.50 shall be distributed to Adams Broadwell Joseph & Cardozo as  
7 reimbursement of ERC's attorney's fees, while \$52,371.77 shall be distributed to ERC for its  
8 in-house legal fees.

9 **4.6** In the event that ORGAIN fails to remit the Total Settlement Amount owed under  
10 Section 4 of this Consent Judgment on or before the Due Date, ORGAIN shall be deemed to be in  
11 material breach of its obligations under this Consent Judgment. ERC shall provide written notice of  
12 the delinquency to ORGAIN via electronic mail. If ORGAIN fails to deliver the Total Settlement  
13 Amount within five (5) days from the written notice, the Total Settlement Amount shall become  
14 immediately due and payable and shall accrue interest at the statutory judgment interest rate  
15 provided in the Code of Civil Procedure section 685.010. Additionally, ORGAIN agrees to pay  
16 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this  
17 Consent Judgment in the event that ORGAIN fails to make timely payment under this Section 4.

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

19 **5.1** This Consent Judgment may be modified only upon written agreement of the Parties  
20 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of either Party  
21 as provided under this Section 5 and upon entry of a modified Consent Judgment.

22 **5.2** If there is a higher or additional naturally occurring allowance than that specified in  
23 Table 3.3.3, or if there is a less stringent lead or cadmium standard than that specified in Section 3.3,  
24 which is adopted after the Execution Date by a final statutory or regulatory amendment to  
25 Proposition 65, then ORGAIN, at its sole option, shall be entitled to seek modification of the  
26 Consent Judgment by the Court to incorporate such other allowances or standard.

27 **5.3** If ORGAIN seeks to modify this Consent Judgment pursuant to Sections 5.1 or 5.2,  
28 then ORGAIN must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to

1 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
2 written notice to ORGAIN within thirty days of receiving the Notice of Intent. If ERC notifies  
3 ORGAIN in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and  
4 confer in good faith as required in this Section. If ERC does not provide timely notice to ORGAIN  
5 of ERC's intent to meet and confer under this Section 5.3, ORGAIN shall be entitled to seek Court  
6 approval of the modification requested in its Notice of Intent and ERC shall not be entitled to object  
7 to the requested modification. If ERC provides timely notice to ORGAIN of ERC's intent to meet  
8 and confer under this Section 5.3, the Parties shall meet in person or via telephone within thirty (30)  
9 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such meeting,  
10 if ERC disputes the proposed modification, ERC shall provide to ORGAIN a written basis for its  
11 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an effort  
12 to resolve any remaining disputes. Should it become necessary, the Parties may agree in writing to  
13 different deadlines for the meet-and-confer period.

14 **5.4** In the event that ORGAIN initiates or otherwise requests a modification pursuant to  
15 Sections 5.1 or 5.2, and the meet-and-confer process leads to a joint motion or application to modify  
16 the Consent Judgment, ORGAIN shall reimburse ERC its costs and reasonable attorney's fees for  
17 the time spent in the meet-and-confer process and filing and arguing the motion or application.

18 **5.5** If the meet-and-confer process specified in Section 5.3 does not lead to a joint  
19 motion or application in support of a modification of the Consent Judgment, or if ERC does not  
20 agree to ORGAIN'S requested modification, then either Party may seek judicial relief on its own. In  
21 that event, the Party seeking judicial relief shall bear the burden of proving, by a preponderance of  
22 the evidence, that it meets the grounds for the requested relief.

## 23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this  
25 Consent Judgment.

26 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered  
27 Product (for which ERC alleges that no warning has been provided), then ERC shall inform  
28 ORGAIN in a reasonably prompt manner of its test results, including information sufficient to

1 permit ORGAIN to identify the Covered Products at issue. ORGAIN shall, within thirty days  
2 following such notice, provide ERC with testing information, from an independent third-party  
3 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating ORGAIN's  
4 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the  
5 matter prior to ERC taking any further legal action.

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

7 This Consent Judgment shall be binding upon, and shall inure to the benefit of, the Parties and  
8 their respective heirs, successors, and assigns.

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

10 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
11 behalf of itself and in the public interest, and ORGAIN and its officers, directors, shareholders,  
12 owners, employees, agents, parent companies, subsidiaries, divisions (collectively referred to as the  
13 "ORGAIN Releasees"), suppliers, franchisors, franchisees, licensors, licensees, customers (not  
14 including private label customers of ORGAIN), distributors, wholesalers, retailers (including but  
15 not limited to Rainbow Grocery Cooperative, Inc., Vitamin Shoppe, Inc. and Vitamin Shoppe  
16 Industries, Inc.), and all other upstream and downstream entities in the distribution chain of any  
17 Covered Product, and the predecessors, successors and assigns of any of them (collectively, the  
18 "Covered Releasees"). ERC, on behalf of itself and its respective owners, principals, shareholders,  
19 officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors,  
20 administrators, successors, assigns, and attorneys (collectively referred as the "ERC Releasees"),  
21 and on behalf of the general public in the public interest, hereby waives all rights to institute or  
22 participate in (directly or indirectly) any form of legal action, and fully releases and discharges the  
23 Covered Releasees from any and all claims, actions, causes of action, suits, demands, liabilities,  
24 damages, penalties, fees (including but not limited to attorneys' fees, expert fees, and investigator  
25 fees), costs and expenses (collectively referred to as the "Claims") for alleged violations of  
26 Proposition 65 from the failure to provide warnings for alleged exposures to lead and/or cadmium,  
27 or for causing alleged exposures to lead and/or cadmium, in Covered Products manufactured before  
28 the Compliance Date. Compliance with the terms of this Consent Judgment shall be deemed to

1 constitute compliance with Proposition 65 by any Covered Releasee regarding alleged exposures to  
2 lead and cadmium in the Covered Products manufactured on and after the Compliance Date.

3 **8.2** ERC, on behalf of itself and the ERC Releasees, and ORGAIN, on behalf of itself and  
4 the ORGAIN Releasees, hereby release and discharge each other and Covered Releasees from any  
5 and all known and unknown Claims for alleged violations of Proposition 65, or for any other statutory  
6 or common law, arising from or relating to alleged exposures to lead and lead compounds and  
7 cadmium in the Covered Products manufactured prior to the Compliance Date. It is possible that  
8 other Claims not known to the Parties arising out of the facts alleged in the Notice of Violation or the  
9 Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of  
10 itself and the ERC Releasees and ORGAIN on behalf of itself and the ORGAIN Releasees,  
11 acknowledge that this Consent Judgment is expressly intended to cover and include all such Claims,  
12 including all rights of action therefor up through and including the Compliance Date. ERC, the ERC  
13 Releasees, ORGAIN, and the ORGAIN Releasees have full knowledge of the contents of California  
14 Civil Code section 1542. ERC, on behalf of itself and the ERC Releasees, and ORGAIN on behalf of  
15 itself and the ORGAIN Releasees, acknowledge that the Claims released in Sections 8.1 and 8.2 may  
16 include unknown Claims, and nevertheless waive California Civil Code section 1542 as to any such  
17 unknown Claims. California Civil Code section 1542 reads as follows:

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

23 ERC and ORGAIN acknowledge and understand the significance and consequences of this specific  
24 waiver of California Civil Code section 1542. Furthermore, the Parties agree that compliance with  
25 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by  
26 any Covered Releasee regarding alleged exposures to lead and/or lead compounds and/or cadmium in  
27 the Covered Products manufactured on and after the Compliance Date.

28 **8.3** Nothing in this Consent Judgment is intended to apply to any occupational or  
environmental exposures arising under Proposition 65, nor shall it apply to any of ORGAIN' s  
products other than the Covered Products.

1           **8.4**     Nothing in the scope of the releases in this Section 8 shall affect or limit any Party's  
2 right to seek to enforce the terms of this Consent Judgment.

3           **9.     SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

6           **10.    GOVERNING LAW**

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

9           **11.    PROVISION OF NOTICE**

10          All notices required to be given to either Party to this Consent Judgment by the other shall be in  
11 writing and sent to the following agents listed below via first-class mail.  Courtesy copies via email  
12 may also be sent.

13          **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

14 Chris Heptinstall, Executive Director, Environmental Research Center  
15 3111 Camino Del Rio North, Suite 400  
16 San Diego, CA 92108  
17 Tel: (619) 500-3090  
18 Email: chris\_erc501c3@yahoo.com

19          With a copy to:

20 TANYA A. GULESSERIAN  
21 CHRISTINA M. CARO  
22 ADAMS BROADWELL JOSEPH & CARDOZO  
23 601 Gateway Boulevard, Suite 1000  
24 South San Francisco, CA 94080-7037  
25 Telephone: (650) 589-1660  
26 Facsimile: (650) 589-5062  
27 Email: tgulesserian@adamsbroadwell.com  
28 ccaro@adamsbroadwell.com

**FOR ORGAIN, INC.**

          Andrew Abraham, M.D.  
          CEO  
          Orgain, Inc.  
          2450 Stanley  
          Tustin, CA 92782-1269

          ///  
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1 With a copy to:

2 Trenton H. Norris  
3 Sarah Esmaili  
4 ARNOLD & PORTER KAYE SCHOLER LLP  
5 Three Embarcadero Center, 10th Floor  
6 San Francisco, California 94111-4024  
7 Telephone: (415) 471-3100  
8 Facsimile: (415) 415-3400  
9 Email: trent.norris@apks.com  
10 sarah.esmaili@apks.com

## 11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion  
13 for Court Approval. The Parties shall use their best efforts to support entry of this Consent  
14 Judgment.

15 **12.2** If this Stipulated Consent Judgment is not approved by the Court, it shall be void and  
16 have no force or effect.

17 **12.3** Within five (5) days after Court approval and entry of this Consent Judgment,  
18 ORGAIN shall dismiss its Cross-Complaint without prejudice.

## 19 **13. EXECUTION AND COUNTERPARTS**

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

## 23 **14. DRAFTING**

24 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
25 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
26 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction  
27 of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision  
28 of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties  
and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent  
Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and  
drafting of this Consent Judgment.

1           **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

2           If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
3 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
4 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed  
5 in the absence of such a good faith attempt to resolve the dispute beforehand.

6           **16. ENFORCEMENT**

7           ERC may, by motion or order to show cause before the Superior Court of Alameda County,  
8 enforce the terms and conditions contained in this Consent Judgment. In any action brought by ERC  
9 to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are  
10 provided by law for failure to comply with the Consent Judgment. To the extent the failure to comply  
11 with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC shall not be  
12 limited to enforcement of this Consent Judgment, but may seek in another action whatever fines,  
13 costs, penalties, or remedies as are provided by law for failure to comply with Proposition 65 or other  
14 laws.

15           **17. ENTIRE AGREEMENT, AUTHORIZATION**

16           **17.1** This Consent Judgment contains the sole and entire agreement and understanding of  
17 the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
18 negotiations, commitments and understandings related hereto. No representations, oral or  
19 otherwise, express or implied, other than those contained herein have been made by any Party. No  
20 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist  
21 or to bind any Party.

22           **17.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized by  
23 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided  
24 herein, each Party shall bear its own fees and costs.

25           **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
26           **CONSENT JUDGMENT**

27           This Consent Judgment has come before the Court upon the request of the Parties. The Parties  
28 request the Court to fully review this Consent Judgment and, being fully informed regarding the



1 matters which are the subject of this action, to:

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

5 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),  
6 approve the Settlement, and approve this Consent Judgment.

7 **IT IS SO STIPULATED:**

8  
9 Dated: 8/24, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

10  
11 By:   
Chris Heptinstall, Executive Director

12 Dated: 08/23/17, 2017

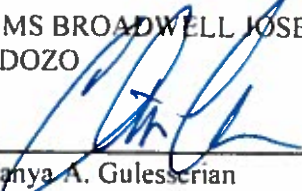
13  
14 ORGAIN, INC.

15 By:   
Andrew Abraham  
16 Its: CEO

17 **APPROVED AS TO FORM:**


18  
19 Dated: August 24, 2017

20 ADAMS BROADWELL JOSEPH &  
CARDOZO

21 By:   
Tanya A. Gulesserian  
22 Christina M. Caro  
23 Attorneys for Plaintiff Environmental  
Research Center, Inc.

24  
25 Dated: 8/23, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

26 By:   
Trenton H. Norris  
27 Sarah Esmaili  
28 Attorneys for Orgain, Inc.

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**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Judge of the Superior Court



# EXHIBIT A

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062  
ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
LAURA E. HORTON  
MARC D. JOSEPH  
RACHAEL E. KOSS  
JAMIE L. MAULDIN  
ADAM J. REGELE  
ELLEN L. WEHR

### VIA CERTIFIED MAIL

Andrew Abraham or Current CEO  
Orgain, Inc.  
Post Office Box 4918  
Irvine, CA 92616

Andrew Abraham or Current CEO  
Orgain, Inc.  
8122 Scholarship  
Irvine, CA 92612

Andrew Abraham or Current CEO  
Orgain, Inc.  
2450 Stanley  
Tustin, CA 92782

Andrew Abraham  
(Orgain, Inc.'s Registered  
Agent for Service of Process)  
2450 Stanley  
Tustin, CA 92782

### VIA ONLINE SUBMISSION

Office of the California Attorney General

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

Dear Addressees:

I represent the Environmental Research Center, Inc. ("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

### VIA ELECTRONIC MAIL

Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

### VIA PRIORITY MAIL

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

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 (hereinafter the “Violator”) is:

**Orgain, Inc.**

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

- **Orgain Inc. Vegan Nutritional Shake Sweet Vanilla Bean - Lead**
- **Orgain Inc. Vegan Nutritional Shake Smooth Chocolate - Lead**
- **Orgain Inc. Organic Protein Plant Based Powder Creamy Chocolate Fudge - Lead**
- **Orgain Inc. Organic Protein Plant Based Powder Vanilla Bean - Lead**
- **Orgain Inc. Organic Meal All-In-One Nutrition Creamy Chocolate Fudge - Lead**
- **Orgain Inc. Organic Meal All-In-One Nutrition Vanilla Bean - Lead**
- **Orgain Inc. Organic Hydration Orange - Lead**
- **Orgain Inc. Organic Hydration Lemon Ice - Lead**
- **Orgain Inc. Organic Hydration Coconut - Lead**
- **Orgain Inc. Organic Hydration Berry Punch - 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 and lead compounds as chemicals known to cause cancer.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead 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 lead. The method of warning should be a warning that

October 16, 2015

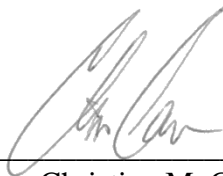
Page 3

appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since October 16, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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 the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client'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 chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

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

I, Christina Caro, 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 16, 2015



\_\_\_\_\_  
Christina M. Caro



**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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On October 16, 2015, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Andrew Abraham or  
Current CEO  
Orgain, Inc.  
Post Office Box 4918  
Irvine, CA 92616

Andrew Abraham or  
Current CEO  
Orgain, Inc.  
2450 Stanley  
Tustin, CA 92782

Andrew Abraham or  
Current CEO  
Orgain, Inc.  
8122 Scholarship  
Irvine, CA 92612

Andrew Abraham  
(Orgain, Inc.’s Registered  
Agent for Service of Process)  
2450 Stanley  
Tustin, CA 92782

On October 16, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 16, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

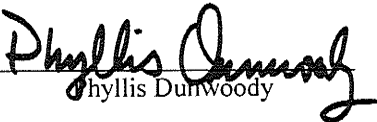
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 16, 2015

Page 6

On October 16, 2015, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on October 16, 2015, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

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

October 16, 2015

Page 7

**Service List**

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

**Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), 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. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say 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 to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***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. Some discharges are exempt from this requirement under certain circumstances discussed below.

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

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***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. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure 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” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure 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” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering 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 pass into or probably pass into a source of drinking water, 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” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that 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. 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. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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 to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
  - Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days;
- and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: October 16, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**



Date: October 16, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

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Signature of alleged violator or authorized representative Date

---

Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

ccaro@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
MARC D. JOSEPH  
RACHAEL E. KOSS  
NATALIE B. KUFFEL  
LINDA T. SOBCZYNSKI

October 12, 2016

### VIA CERTIFIED MAIL

Andrew Abraham or Current CEO  
Orgain, Inc.  
Post Office Box 4918  
Irvine, CA 92616

Andrew Abraham or Current CEO  
Orgain, Inc.  
8122 Scholarship  
Irvine, CA 92612

Andrew Abraham or Current CEO  
Orgain, Inc.  
16631 Millikan Avenue  
Irvine, CA 92606

Andrew Abraham  
(Orgain, Inc.'s Registered  
Agent for Service of Process)  
16631 Millikan Avenue  
Irvine, CA 92606

### VIA ONLINE SUBMISSION

Office of the California Attorney General

### VIA ELECTRONIC MAIL

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

### VIA ELECTRONIC MAIL

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

**VIA ELECTRONIC MAIL**

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

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

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

Yen Dang, Supervising Deputy District  
Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

**VIA ELECTRONIC MAIL**

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

**VIA PRIORITY MAIL**

District Attorneys of Select 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 represent the Environmental Research Center, Inc. (“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 (hereinafter the “Violator”) is:

**Orgain, Inc.**

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

- Orgain Inc. Organic Protein Almond Milk Unsweetened Vanilla - Lead**
- Orgain Inc. Organic Protein Almond Milk Lightly Sweetened Vanilla - Lead**
- Orgain Inc. Grass Fed Protein Nutritional Protein Shake Creamy Chocolate Fudge - Lead**
- Orgain Inc. Grass Fed Whey Protein Powder Creamy Chocolate Fudge - Lead**
- Orgain Inc. Organic Slim Plant Based Protein Powder Vanilla - Lead**
- Orgain Inc. Organic Slim Plant Based Protein Powder Chocolate – Lead, Cadmium**
- Orgain Inc. Organic Superfoods All-In-One Super Nutrition Berry Flavor – Lead**
- Orgain Inc. Organic Superfoods All-In-One Super Nutrition Original Flavor - Lead**
- Orgain Inc. Organic Protein Nutritional Protein Shake Creamy Chocolate Fudge - Cadmium**

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 and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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, is enclosed with the copy of this letter to the Violator.

The Violator 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, lead and/or cadmium. The consumer exposures that are the subject of this

October 14, 2016

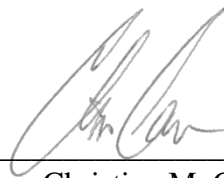
Page 4

notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead and/or cadmium 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 lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since October 14, 2013, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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 the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client'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.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

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

I, Christina Caro, 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 chemicals that are 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 14, 2016



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Christina M. Caro

**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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On October 14, 2016, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Andrew Abraham or Current CEO  
Orgain, Inc.  
Post Office Box 4918  
Irvine, CA 92616

Andrew Abraham or Current CEO  
Orgain, Inc.  
16631 Millikan Avenue  
Irvine, CA 92606

Andrew Abraham or Current CEO  
Orgain, Inc.  
8122 Scholarship  
Irvine, CA 92612

Andrew Abraham  
(Orgain, Inc.’s Registered  
Agent for Service of Process)  
16631 Millikan Avenue  
Irvine, CA 92606

On October 14, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 14, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org



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

October 14, 2016

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Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

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

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

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On October 14, 2016, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on October 14, 2016, in Fort Oglethorpe, Georgia.

---

Phyllis Dunwoody

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

October 14, 2016

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**Service List**

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

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

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

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

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

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

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

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

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

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

District Attorney, Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 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, Los Angeles County  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

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

District Attorney, Marin County  
3501 Civic Center Drive, 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  
550 W. Main 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, Nevada County  
201 Commercial Street  
Nevada City, CA 95959

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

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, 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, Suite 1300  
San Diego, CA 92101

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

District Attorney, Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

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, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95354

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

District Attorney, Yuba County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

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

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

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16<sup>th</sup> Floor  
San Jose, CA 95113