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8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 ENVIRONMENTAL RESEARCH CENTER,
13 INC., a non-profit California corporation,

14 Plaintiff,

15 v.

16 ANCIENT BRANDS, LLC, formerly known as
17 GET REAL NUTRITION, LLC and formerly
18 known as ANCIENT NUTRITION, LLC,
19 individually and dba ANCIENT NUTRITION, a
20 Florida limited liability company; ANCIENT
21 NUTRITION HOLDINGS, LLC, formerly
22 known as GET REAL HOLDINGS, LLC,
23 individually and dba ANCIENT NUTRITION, a
24 Florida limited liability company; ANCIENT
25 NUTRITION, LLC, individually and dba
26 ANCIENT NUTRITION, a Florida limited
27 liability company; GET REAL NUTRITION,
28 LLC, individually and dba ANCIENT
NUTRITION, a Delaware limited liability
company; GET REAL HOLDINGS, LLC,
individually and dba ANCIENT NUTRITION, a
Florida limited liability company; BEYOND
ORGANIC, LLC, a Florida limited liability
company; and DOES 1 – 25,

Defendants.

) Case No. 19CV347712

)
) **COMPLAINT FOR PERMANENT**
) **INJUNCTION, CIVIL PENALTIES AND**
) **OTHER RELIEF**

) Health & Safety Code §25249.5, *et seq.*

1 Plaintiff Environmental Research Center, Inc. (“PLAINTIFF” or “ERC”) brings this
2 action in the interests of the general public and, on information and belief, hereby alleges:

3 **INTRODUCTION**

4 1. This action seeks to remedy the continuing failure of Defendants ANCIENT
5 BRANDS, LLC, formerly known as GET REAL NUTRITION, LLC and formerly known as
6 ANCIENT NUTRITION, LLC, individually and dba ANCIENT NUTRITION; ANCIENT
7 NUTRITION HOLDINGS, LLC, formerly known as GET REAL HOLDINGS, LLC,
8 individually and dba ANCIENT NUTRITION; ANCIENT NUTRITION, LLC, individually and
9 dba ANCIENT NUTRITION; GET REAL NUTRITION, LLC, individually and dba ANCIENT
10 NUTRITION; GET REAL HOLDINGS, LLC, individually and dba ANCIENT NUTRITION;
11 BEYOND ORGANIC, LLC (collectively “ANCIENT NUTRITION”) and DOES 1-25
12 (hereinafter individually referred to as “DEFENDANT” or collectively as “DEFENDANTS”) to
13 warn consumers in California that they are being exposed to lead and/or cadmium, chemicals
14 known to the State of California to cause cancer, birth defects, and other reproductive harm.
15 According to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
16 Code (“H&S Code”) section 25249.5 (also known as and referred to hereinafter as “Proposition
17 65”), businesses must provide persons with a “clear and reasonable warning” before exposing
18 individuals to a chemical known to the state to cause cancer or reproductive harm.

19 2. DEFENDANTS manufacture, package, distribute, market, and/or sell in California
20 certain consumer products, as defined in Cal. Code Regs., tit. 27, § 25600.1, subd. (d) and (e),
21 containing lead and/or cadmium (the “SUBJECT PRODUCTS”):

- 22 • **Ancient Nutrition Organic Bone Broth Protein Meal Savory Herbs Whole**
- 23 **Food Shake & Meal Replacement – Lead, Cadmium**
- 24 • **Ancient Nutrition Bone Broth Protein Turmeric Mobilizing - Lead**
- 25 • **Ancient Nutrition Keto Feast Vanilla - Lead**
- 26 • **Ancient Nutrition Organic Bone Broth Protein Nitro Beet – Lead**
- 27 • **Ancient Nutrition Organic Bone Broth Protein Cafe Mocha – Lead,**
- 28 **Cadmium**

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- **Ancient Nutrition Organic Bone Broth Protein Peanut Butter – Lead, Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein Dark Chocolate – Lead, Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein French Vanilla - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Sweet Greens - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Turmeric Spice - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Savory Herbs - Lead**
- **Ancient Nutrition Keto Protein Turmeric - Lead**
- **Ancient Nutrition Keto Protein Chocolate - Lead**
- **Ancient Nutrition Keto Feast Caffeine Free Maple - Lead**
- **Ancient Nutrition Keto Broth Vanilla - Lead**
- **Ancient Nutrition Keto Digest Digestive Enzyme Formula - Lead**
- **Ancient Nutrition Keto Biome Probiotic - Lead**
- **Ancient Nutrition Multi Collagen Protein Chocolate – Lead, Cadmium**
- **Ancient Nutrition Bone Broth Protein Burst Pre-Workout Apple Greens - Lead**
- **Ancient Nutrition Keto Fire Ketone Activator - Lead**
- **Ancient Nutrition Keto Multi Fermented Vitamin & Mineral Formula - Lead**
- **Ancient Nutrition Bone Broth Protein Peanut Butter Chocolate Chip – Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein Meal Dark Chocolate – Lead, Cadmium**
- **Ancient Nutrition Bone Broth Protein Meal Vanilla Crème – Lead, Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein Meal Peanut Butter – Lead, Cadmium**

- 1 • **Ancient Nutrition Organic Bone Broth Protein Meal French Vanilla –**
- 2 **Lead, Cadmium**
- 3 • **Ancient Nutrition Keto Feast Chocolate - Lead**
- 4 • **Ancient Nutrition Keto Protein Vanilla - Lead**
- 5 • **Ancient Nutrition Keto Broth Chocolate - Lead**
- 6 • **Ancient Nutrition Keto Protein Coffee - Lead**
- 7 • **Ancient Nutrition Multi Collagen Protein Cold Brew Collagen – Lead**

8 3. Lead and cadmium (hereinafter, the “LISTED CHEMICALS”) are chemicals known
9 to the State of California to cause cancer, birth defects, and other reproductive harm.

10 4. Consumption of the SUBJECT PRODUCTS causes exposures to the LISTED
11 CHEMICALS at levels requiring a “clear and reasonable warning” under Proposition 65.
12 DEFENDANTS exposed consumers to the LISTED CHEMICALS and have failed to provide
13 the health hazard warnings required by Proposition 65.

14 5. DEFENDANTS’ continued manufacturing, packaging, distributing, marketing
15 and/or sales of the SUBJECT PRODUCTS without the required health hazard warnings, causes,
16 or threatens to cause, individuals to be involuntarily, unknowingly and unwittingly exposed to
17 levels of the LISTED CHEMICALS that violate Proposition 65.

18 **PARTIES**

19 6. PLAINTIFF is a non-profit corporation organized under California law. ERC is
20 dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances,
21 consumer protection, worker safety, and corporate responsibility.

22 7. ERC is a person within the meaning of H&S Code §25249.11 and brings this
23 enforcement action in the public interest pursuant to H&S Code §25249.7(d). H&S Code §
24 25249.7(d) specifies that actions to enforce Proposition 65 may be brought by a person in the
25 public interest, provided certain notice requirements are met and no other public prosecutor is
26 diligently prosecuting an action for the same violation(s).

27 8. ANCIENT BRANDS, LLC, formerly known as GET REAL NUTRITION, LLC and
28 formerly known as ANCIENT NUTRITION, LLC, individually and dba ANCIENT

1 NUTRITION, is now, and was at all times relevant herein, a limited liability company organized
2 under the laws of Florida and is a person in the course of doing business within the meaning of
3 H&S Code §25249.11.

4 9. ANCIENT NUTRITION HOLDINGS, LLC, formerly known as GET REAL
5 HOLDINGS, LLC, individually and dba ANCIENT NUTRITION, is now, and was at all times
6 relevant herein, a limited liability company organized under the laws of Florida and is a person
7 in the course of doing business within the meaning of H&S Code §25249.11.

8 10. ANCIENT BRANDS, LLC, individually and dba ANCIENT NUTRITION, is now,
9 and was at all times relevant herein, a limited liability company organized under the laws of
10 Florida and is a person in the course of doing business within the meaning of H&S Code
11 §25249.11.

12 11. GET REAL NUTRITION, LLC, individually and dba ANCIENT NUTRITION, is
13 now, and was at all times relevant herein, a limited liability company organized under the laws
14 of Delaware and is a person in the course of doing business within the meaning of H&S Code
15 §25249.11.

16 12. GET REAL HOLDINGS, LLC, individually and dba ANCIENT NUTRITION, is
17 now, and was at all times relevant herein, a limited liability company organized under the laws
18 of Florida and is a person in the course of doing business within the meaning of H&S Code
19 §25249.11.

20 13. BEYOND ORGANIC, LLC, is now, and was at all times relevant herein, a limited
21 liability company organized under the laws of Florida and is a person in the course of doing
22 business within the meaning of H&S Code §25249.11.

23 14. DEFENDANTS own, administer, direct, control and/or operate facilities and/or
24 agents, distributors, sellers, marketers or other retail operations who place their SUBJECT
25 PRODUCTS into the stream of commerce in California (including but not limited to Santa Clara
26 County) under the brand name Ancient Nutrition and other brand names, which contain the
27 LISTED CHEMICALS without first giving clear and reasonable warnings.

28 15. DEFENDANTS, separately and each of them, are or were, at all times relevant to the

1 claims in this Complaint and continuing through the present, legally responsible for compliance
2 with the provisions of Proposition 65. Whenever an allegation regarding any act or omission of
3 a DEFENDANT is made herein, such allegation shall be deemed to mean that DEFENDANT, or
4 its agent, officer, director, manager, supervisor, or employee did, or so authorized, or failed to
5 do, such acts while engaged in the affairs of DEFENDANT's business operations and/or while
6 acting within the course and scope of their employment or while conducting business for
7 DEFENDANT(S) for a commercial purpose.

8 16. In this Complaint, when reference is made to any act or omission of a DEFENDANT,
9 such allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
10 representatives of DEFENDANT acted or authorized such actions, and/or negligently failed and
11 omitted to act or adequately and properly supervise, control or direct its employees and agents
12 while engaged in the management, direction, operation or control of the affairs of the business
13 organization. Whenever reference is made to any act or omission of any DEFENDANT, such
14 allegation shall be deemed to mean the act or omission of each DEFENDANT acting
15 individually, jointly, and severally as defined by Civil Code Section 1430 *et seq.*

16 17. PLAINTIFF does not know the true names, capacities and liabilities of
17 DEFENDANTS DOES Nos. 1-25, inclusive, and therefore sues them under fictitious names.
18 PLAINTIFF will amend this Complaint to allege the true name and capacities of the DOE
19 Defendants upon being ascertained. Each of these Defendants was in some way legally
20 responsible for the acts, omissions, and/or violations alleged herein.

21 **JURISDICTION AND VENUE**

22 18. This Court has jurisdiction over this action pursuant to California Constitution Article
23 VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those
24 given by statute to other trial courts." The statute under which this action is brought does not
25 specify any other court with jurisdiction.

26 19. This Court has jurisdiction over DEFENDANTS because they are business entities
27 that do sufficient business in California, have sufficient minimum contacts in California or
28 otherwise intentionally avail themselves of the California market, through the sale, marketing

1 and use of their SUBJECT PRODUCTS in California, to render the exercise of jurisdiction over
2 them by the California courts consistent with traditional notions of fair play and substantial
3 justice.

4 20. Venue in this action is proper in the Santa Clara County Superior Court because the
5 cause, or part thereof, arises in the County of Santa Clara since DEFENDANTS' products are
6 marketed, offered for sale, sold, used, and/or consumed in this county.

7 **STATUTORY BACKGROUND**

8 21. The People of the State of California declared in Proposition 65 their right "[t]o be
9 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
10 harm." (Section 1(b) of Initiative Measure, Proposition 65).

11 22. To effectuate this goal, Proposition 65 requires that individuals be provided with a
12 "clear and reasonable warning" before being exposed to chemicals listed by the State of
13 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
14 part:

15 No person in the course of doing business shall knowingly and intentionally
16 expose any individual to a chemical known to the state to cause cancer or
17 reproductive toxicity without first giving clear and reasonable warning to such
18 individual....

18 23. An exposure to a chemical in a consumer product is one "that results from a person's
19 acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer
20 product, including consumption of food." (Cal. Code Regs., tit. 27, § 25600.1, subd. (e).) A
21 "consumer product" includes "any article, or component part thereof, including food, that is
22 produced, distributed, or sold for the personal use, consumption or enjoyment of a consumer,"
23 and the term "food" is further defined to include dietary supplements. (Cal. Code Regs., tit. 27, §
24 25600.1, subd. (d) and (g).)

25 24. Proposition 65 provides that any "person who violates or threatens to violate" the
26 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase
27 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
28 probability that a violation will occur" (H&S Code §25249.11(e)). Violators are liable for civil

1 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

2 **FACTUAL BACKGROUND**

3 25. On February 27, 1987, the State of California officially listed lead as a chemical
4 known to cause reproductive toxicity. Lead became subject to the warning requirement one year
5 later and was therefore subject to the “clear and reasonable” warning requirements of Proposition
6 65 beginning on February 27, 1988. (27 California Code of Regulations (“CCR”) §25600, *et*
7 *seq.*; H&S Code §25249.5, *et seq.*).

8 26. On October 1, 1992, the State of California officially listed lead and lead compounds
9 as chemicals known to cause cancer. Lead and lead compounds became subject to the warning
10 requirement one year later and were therefore subject to the “clear and reasonable” warning
11 requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25600, *et seq.*; H&S
12 Code §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for
13 lead is 0.5 µg/day (micrograms a day) for reproductive toxicity and the no significant risk level
14 for carcinogens is 15µg/day (oral).

15 27. Cadmium was officially listed as a chemical known to cause developmental toxicity
16 and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were
17 listed as chemicals known to the State of California to cause cancer on October 1, 1987. (State
18 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986 Chemicals
19 Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for cadmium as a
20 chemical known to cause reproductive toxicity is 4.1 micrograms per day. (Cal. Code Regs., tit.
21 27, §25805, subd. (b).)

22 28. To test DEFENDANTS’ SUBJECT PRODUCTS for lead and cadmium, PLAINTIFF
23 hired a well-respected and accredited testing laboratory. The results of testing undertaken by
24 PLAINTIFF of DEFENDANTS’ SUBJECT PRODUCTS show that the SUBJECT PRODUCTS
25 tested were in violation of the 0.5 µg/day “safe harbor” daily dose limits set forth for lead and/or
26 the 4.1 µg/day “safe harbor” daily dose limits set forth for cadmium in Proposition 65’s
27 regulations. Very significant is the fact that people are being exposed to lead and/or cadmium
28 through ingestion as opposed to other not as harmful methods of exposure.

1 29. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and
2 intentionally exposed the consumers of the SUBJECT PRODUCTS to the LISTED
3 CHEMICALS without first giving a clear and reasonable warning to such individuals.

4 30. The SUBJECT PRODUCTS have allegedly been sold by DEFENDANTS for use
5 in California since at least January 10, 2016. The SUBJECT PRODUCTS continue to be
6 distributed and sold in California without the requisite warning information.

7 31. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
8 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
9 State of California, including in the County of Santa Clara, have been exposed to the LISTED
10 CHEMICALS without a clear and reasonable warning on the SUBJECT PRODUCTS. The
11 individuals subject to the violative exposures include normal and foreseeable users of the
12 SUBJECT PRODUCTS, as well as all other persons exposed to the SUBJECT PRODUCTS.

13 32. On January 10, 2019 and February 22, 2019, ERC served ANCIENT NUTRITION
14 and each of the appropriate public enforcement agencies with a document entitled “Notice of
15 Violations of California Health & Safety Code Section 25249.5” that provided ANCIENT
16 NUTRITION and the public enforcement agencies with notice that ANCIENT NUTRITION was
17 in violation of Proposition 65 for failing to warn purchasers and individuals using the SUBJECT
18 PRODUCTS that the consumption of the SUBJECT PRODUCTS exposes them to lead and/or
19 cadmium, chemicals known to the State of California to cause cancer and/or reproductive
20 toxicity (“NOTICES”). True and correct copies of the 60-Day NOTICES are attached hereto as
21 **Exhibits A and B** and each is hereby incorporated by reference and available on the Attorney
22 General’s website located at <http://oag.ca.gov/prop65>.

23 33. The NOTICES were issued pursuant to, and in compliance with, the requirements of
24 H&S Code §25249.7(d) and the statute’s implementing regulations regarding the notice of the
25 violations to be given to certain public enforcement agencies and to the violators. The NOTICES
26 included, *inter alia*, the following information: the name, address, and telephone number of the
27 noticing individual; the name of the alleged violators; the statute violated; the approximate time
28 period during which violations occurred; and descriptions of the violations including the

1 chemicals involved, the route of toxic exposure, and the specific products or type of products
2 causing the violations.

3 34. ANCIENT NUTRITION was also provided copies with the NOTICES of the
4 document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition
5 65): A Summary,” which is also known as Appendix A to Title 27 of CCR §25903, via Certified
6 Mail.

7 35. The California Attorney General was provided copies of the NOTICES and a
8 Certificate of Merit for each Notice by the attorney for the noticing party, stating that there is a
9 reasonable and meritorious case for this action, and attaching factual information sufficient to
10 establish a basis for the certificate, including the identity of the persons consulted with and relied
11 on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to
12 H&S Code §25249.7(h) (2) via online submission.

13 36. After expiration of the sixty (60) day notice period, the appropriate public enforcement
14 agencies failed to commence and diligently prosecute a cause of action under H&S Code
15 §25249.5, *et seq.* against DEFENDANTS based on the allegations herein.

16 **FIRST CAUSE OF ACTION**
17 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
18 **SUBJECT PRODUCTS described in the January 10, 2019 and February 22, 2019**
19 **Proposition 65 Notices of Violation) Against DEFENDANTS**

20 37. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 36,
21 inclusive, as if specifically set forth herein.

22 38. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant
23 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the
24 course of doing business, knowingly and intentionally exposing individuals in California to
25 chemicals known to the State of California to cause cancer or reproductive toxicity without first
26 giving clear and reasonable warnings to such persons who consume the SUBJECT PRODUCTS
27 containing the LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and 25249.11(f).

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1 39. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
2 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure
3 to the LISTED CHEMICALS from the SUBJECT PRODUCTS, in an amount in excess of \$1
4 million.

5
6 **THE NEED FOR INJUNCTIVE RELIEF**
7 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
8 **the SUBJECT PRODUCTS described in the January 10, 2019 and February 22, 2019**
9 **Proposition 65 Notices of Violation) Against DEFENDANTS**

10 40. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through 39,
11 as if set forth below.

12 41. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant
13 to this action, and continuing through the present, have violated, or threaten to violate, H&S Code
14 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals
15 in California to chemicals known to the State of California to cause cancer or reproductive toxicity
16 without first giving clear and reasonable warnings to such persons who consume the SUBJECT
17 PRODUCTS containing the LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and
18 25249.11(f).

19 42. By the above-described acts, DEFENDANTS have violated, or threaten to violate,
20 H&S Code § 25249.6 and are therefore subject to preliminary and permanent injunctions ordering
21 DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and future
22 customers, and to provide warnings to DEFENDANTS' past customers who purchased or used
23 the SUBJECT PRODUCTS without receiving a clear and reasonable warning.

24 43. A remedy of injunctive relief under Proposition 65 is specifically authorized by H&S
25 Code §25249.7(a).

26 44. Continuing commission by DEFENDANTS of the acts alleged above will irreparably
27 harm the citizens of the State of California, for which harm they have no plain, speedy, or
28 adequate remedy at law.

45. In the absence of preliminary and then permanent injunctive relief, DEFENDANTS

1 will continue to create a substantial risk of irreparable injury by continuing to cause consumers
2 to be involuntarily, unknowingly and unwittingly exposed to the LISTED CHEMICALS through
3 the consumption of the SUBJECT PRODUCTS.

4 **PRAYER FOR RELIEF**

5 Wherefore, PLAINTIFF prays for the following relief:

6 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
7 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
8 participating with DEFENDANTS, from manufacturing, distributing, marketing or selling the
9 SUBJECT PRODUCTS in California without first providing a clear and reasonable warning,
10 within the meaning of Proposition 65, that the consumers of the SUBJECT PRODUCTS are
11 exposed to the LISTED CHEMICALS;

12 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
13 DEFENDANTS to identify and locate each individual who has purchased the SUBJECT
14 PRODUCTS since January 10, 2016, and to provide a warning to such person that the
15 consumption of the SUBJECT PRODUCTS will expose the consumer to chemicals known to
16 cause cancer, birth defects, and other reproductive harm;

17 C. An assessment of civil penalties pursuant to H&S Code §25249.7(b), against
18 DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65, in an
19 amount in excess of \$1 million, according to proof;

20 D. An award to PLAINTIFF of its reasonable attorney's fees and costs of suit
21 pursuant to California Code of Civil Procedure §§ 1032 *et. seq* and 1021.5, as PLAINTIFF shall
22 specify in further applications to the Court; and,

23 E. Such other and further relief as may be just and proper.

24 DATED: May 8, 2019

AQUA TERRA AERIS LAW GROUP

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26 Matthew C. Maclear
27 Anthony M. Barnes
28 Attorneys for Plaintiff
Environmental Research Center, Inc.

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EXHIBIT A



Matthew Maclear
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Anthony Barnes
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January 10, 2019

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually and dba Ancient Nutrition
Ancient Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and dba Ancient Nutrition
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
Ancient Brands, LLC, individually and dba Ancient Nutrition
Get Real Nutrition, LLC, individually and dba Ancient Nutrition



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 10, 2019
Page 2

**Ancient Nutrition Holdings, LLC, individually and dba Ancient Nutrition
Get Real Holdings, LLC, individually and dba Ancient Nutrition
Beyond Organic, LLC**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Ancient Nutrition Organic Bone Broth Protein Meal Savory Herbs Whole Food Shake & Meal Replacement – Lead, Cadmium**
2. **Ancient Nutrition Bone Broth Protein Turmeric Mobilizing - Lead**
3. **Ancient Nutrition Keto Feast Vanilla - Lead**
4. **Ancient Nutrition Organic Bone Broth Protein Nitro Beet - Lead**
5. **Ancient Nutrition Organic Bone Broth Protein Cafe Mocha – Lead, Cadmium**
6. **Ancient Nutrition Organic Bone Broth Protein Peanut Butter – Lead, Cadmium**
7. **Ancient Nutrition Organic Bone Broth Protein Dark Chocolate – Lead, Cadmium**
8. **Ancient Nutrition Organic Bone Broth Protein French Vanilla - Lead**
9. **Ancient Nutrition Organic Bone Broth Protein Sweet Greens - Lead**
10. **Ancient Nutrition Organic Bone Broth Protein Turmeric Spice - Lead**
11. **Ancient Nutrition Organic Bone Broth Protein Savory Herbs - Lead**
12. **Ancient Nutrition Keto Protein Turmeric - Lead**
13. **Ancient Nutrition Keto Protein Chocolate - Lead**
14. **Ancient Nutrition Keto Feast Caffeine Free Maple - Lead**
15. **Ancient Nutrition Keto Broth Vanilla - Lead**
16. **Ancient Nutrition Keto Digest Digestive Enzyme Formula - Lead**
17. **Ancient Nutrition Keto Biome Probiotic - Lead**
18. **Ancient Nutrition Multi Collagen Protein Chocolate – Lead, Cadmium**
19. **Ancient Nutrition Bone Broth Protein Burst Pre-Workout Apple Greens - Lead**
20. **Ancient Nutrition Keto Fire Ketone Activator - Lead**
21. **Ancient Nutrition Keto Multi Fermented Vitamin & Mineral Formula - Lead**
22. **Ancient Nutrition Bone Broth Protein Peanut Butter Chocolate Chip - 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.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 10, 2019
Page 3

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 10, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and dba Ancient Nutrition; Ancient Nutrition, LLC, individually and dba



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Ancient Nutrition; Ancient Brands, LLC, individually and dba Ancient Nutrition; Get Real Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, individually and dba Ancient Nutrition; Get Real Holdings, LLC, individually and dba Ancient Nutrition; Beyond Organic, LLC and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)



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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and dba Ancient Nutrition; Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Brands, LLC, individually and dba Ancient Nutrition; Get Real Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, individually and dba Ancient Nutrition; Get Real Holdings, LLC, individually and dba Ancient Nutrition and Beyond Organic, LLC

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 10, 2019

Matthew Maclear



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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On January 10, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Ancient Brands, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Nutrition, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Beyond Organic, LLC
1201 US Hwy 1, Ste 350
North Palm Beach, FL 33408

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
1201 US Hwy 1, Ste 350
North Palm Beach, FL 33408

Current President or CEO
Beyond Organic, LLC
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
1201 US Hwy 1, Ste 350
North Palm Beach, FL 33408

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
1201 US Hwy 1, Ste 350
North Palm Beach, FL 33408



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

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Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
1201 US Hwy 1, Ste 350
North Palm Beach, FL 33408

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
1201 US Hwy 1, Ste 350
North Palm Beach, FL 33408

Current President or CEO
Beyond Organic, LLC
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Beyond Organic, LLC
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Beyond Organic, LLC
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067



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

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Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Kenneth A. Duke, Jr.
(Registered Agent for Beyond Organic, LLC)
924 Pompano Dr
Jupiter, FL 33458

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

CT Corporation System
Registered Agent for Ancient Brands, LLC, individually and dba
Ancient Nutrition)
818 W 7th St, Ste 930
Los Angeles, CA 90017

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

CT Corporation System
Registered Agent for Ancient Brands, LLC, individually and
dba Ancient Nutrition)
300 Montvue Road
Knoxville, TN 37919

Current President or CEO
Beyond Organic, LLC
5490 County Road 333
Koshkonong, MO 65692

Corporate Creations Network
(Registered Agent for Get Real Nutrition, LLC, individually and dba
Ancient Nutrition)
12747 Olive Blvd, Ste 300
St. Louis, MO 63141

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
6011 Welch Street
Arvada, CO 80004

CT Corporation System
(Registered Agent for Ancient Brands, LLC, individually and dba
Ancient Nutrition)
1200 S Pine Island Rd
Plantation, FL 33324

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
5490 County Road 333
Koshkonong, MO 65692

Kenneth A. Duke, Jr.
(Registered Agent for Ancient Nutrition Holdings, LLC, individually
and dba Ancient Nutrition)
924 Pompano Dr
Jupiter, FL 33458

Lori Hofer
(Registered Agent for Get Real Nutrition, LLC, individually
and dba Ancient Nutrition)
6011 Welch Street
Arvada, CO 80004



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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On January 10, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 10, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

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

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

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

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

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 10

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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatt.org

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

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

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

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

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

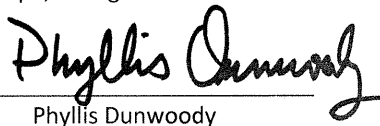
Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

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

On January 10, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 10, 2019, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
January 10, 2019
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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	

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. The reader is directed to the statute and OEHHA 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 27001.¹ 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

¹ 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>.

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.

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 make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed 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 Period. 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 contaminant² 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.

² See Section 25501(a)(4).

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

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.

Revised: May 2017

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.

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EXHIBIT B



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

February 22, 2019

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

- Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually and dba Ancient Nutrition**
- Ancient Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and dba Ancient Nutrition**
- Ancient Nutrition, LLC, individually and dba Ancient Nutrition**
- Ancient Brands, LLC, individually and dba Ancient Nutrition**
- Get Real Nutrition, LLC, individually and dba Ancient Nutrition**



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**Ancient Nutrition Holdings, LLC, individually and dba Ancient Nutrition
Get Real Holdings, LLC, individually and dba Ancient Nutrition
Beyond Organic, LLC**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Ancient Nutrition Organic Bone Broth Protein Meal Dark Chocolate – Lead, Cadmium**
2. **Ancient Nutrition Bone Broth Protein Meal Vanilla Crème – Lead, Cadmium**
3. **Ancient Nutrition Organic Bone Broth Protein Meal Peanut Butter – Lead, Cadmium**
4. **Ancient Nutrition Organic Bone Broth Protein Meal French Vanilla – Lead, Cadmium**
5. **Ancient Nutrition Keto Feast Chocolate - Lead**
6. **Ancient Nutrition Keto Protein Vanilla - Lead**
7. **Ancient Nutrition Keto Broth Chocolate - Lead**
8. **Ancient Nutrition Keto Protein Coffee - Lead**
9. **Ancient Nutrition Multi Collagen Protein Cold Brew Collagen - 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.

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.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 22, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.



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Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew Maclear", is written over a horizontal line.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and dba Ancient Nutrition; Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Brands, LLC, individually and dba Ancient Nutrition; Get Real Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, individually and dba Ancient Nutrition; Get Real Holdings, LLC, individually and dba Ancient Nutrition; Beyond Organic, LLC and their Registered Agents for Service of Process only)

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



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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and dba Ancient Nutrition; Ancient Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Brands, LLC, individually and dba Ancient Nutrition; Get Real Nutrition, LLC, individually and dba Ancient Nutrition; Ancient Nutrition Holdings, LLC, individually and dba Ancient Nutrition; Get Real Holdings, LLC, individually and dba Ancient Nutrition and Beyond Organic, LLC

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 22, 2019

Matthew Maclear



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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On February 22, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Ancient Brands, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Nutrition, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Beyond Organic, LLC
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Beyond Organic, LLC
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
2000 Mallory Lane, Ste 130-307
Franklin, TN 37067

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374



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

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Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
1651 California St, Suite A
Redlands, CA 92374

Current President or CEO
Beyond Organic, LLC
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
700 Indian Springs Drive
Lancaster, PA 17601

Current President or CEO
Beyond Organic, LLC
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Ancient Brands, LLC, individually and dba Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Ancient Nutrition, LLC, individually and dba Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Get Real Nutrition, LLC, individually and dba
Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Get Real Holdings, LLC, individually and dba
Ancient Nutrition
415 Duke Dr, Ste 380
Franklin, TN 37067

Current President or CEO
Beyond Organic, LLC
5490 County Road 333
Koshkonong, MO 65692

Current President or CEO
Ancient Nutrition Holdings, LLC, individually and dba
Ancient Nutrition
5490 County Road 333
Koshkonong, MO 65692



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Kenneth A. Duke, Jr.
(Registered Agent for Beyond Organic, LLC)
924 Pompano Dr
Jupiter, FL 33458

Corporate Creations Network
(Registered Agent for Get Real Nutrition, LLC, individually and dba
Ancient Nutrition)
12747 Olive Blvd, Ste 300
St. Louis, MO 63141

CT Corporation System
Registered Agent for Ancient Brands, LLC, individually and dba
Ancient Nutrition)
818 W 7th St, Ste 930
Los Angeles, CA 90017

CT Corporation System
(Registered Agent for Ancient Brands, LLC, individually and dba
Ancient Nutrition)
1200 S Pine Island Rd
Plantation, FL 33324

CT Corporation System
Registered Agent for Ancient Brands, LLC, individually and
dba Ancient Nutrition)
300 Montvue Road
Knoxville, TN 37919

Kenneth A. Duke, Jr.
(Registered Agent for Ancient Nutrition Holdings, LLC, individually
and dba Ancient Nutrition)
924 Pompano Dr
Jupiter, FL 33458

On February 22, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On February 22, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us



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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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
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

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

Valerie Lopez, Deputy City Attorney
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1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

Tori Verber Salazar, District Attorney
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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, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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

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

Jeffrey S. Rosell, District Attorney
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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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



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

On February 22, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on February 22, 2019, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

Phyllis Dunwoody



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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	

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. The reader is directed to the statute and OEHHA 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 27001.¹ 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

¹ 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>.

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.

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 make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed 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 Period. 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 contaminant² 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.

² See Section 25501(a)(4).

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

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.

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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.