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FILED BY FAX
 ALAMEDA COUNTY
 July 21, 2021
 CLERK OF
 THE SUPERIOR COURT
 By Cheryl Clark, Deputy
 CASE NUMBER:
RG21094334

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF ALAMEDA**

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

13 **Plaintiff,**

14 **vs.**

15 **NEWPORT NEWS NUTRITION CORNER,**
 16 **LLC, individually and dba THE NUTRITION**
 17 **CORNERS; ARLINGTON NUTRITION**
 18 **CORNER, LLC, individually and dba THE**
 19 **NUTRITION CORNERS; 'MERICA LABZ,**
 20 **LLC; 'MERICA ENERGY, LLC; CORE**
 21 **NUTRITIONALS LLC; and DOES 1-100**

22 **Defendants.**

CASE NO. RG21094334

**FIRST AMENDED COMPLAINT FOR
 INJUNCTIVE AND DECLARATORY
 RELIEF AND CIVIL PENALTIES**

[Miscellaneous Civil Complaint (42)]
 Proposition 65, Health & Safety Code
 Section 25249.5 et seq.]

22 Plaintiff Environmental Research Center, Inc. hereby alleges:

23 **I**

24 **INTRODUCTION**

25 1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings
 26 this action as a private attorney general enforcer and in the public interest pursuant to Health &
 27 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement
 28 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65,"

1 mandates that businesses with ten or more employees must provide a “clear and reasonable
2 warning” prior to exposing any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity. Lead is a chemical known to the State of California to cause cancer, birth
4 defects, and other reproductive harm. This First Amended Complaint seeks injunctive and
5 declaratory relief and civil penalties to remedy the ongoing failure of Defendants Newport
6 News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition
7 Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy,
8 LLC; and Core Nutritionals LLC (collectively “The Nutrition Corners”) and Does 1-100
9 (hereinafter individually referred to as “Defendant” or collectively as “Defendants”), to warn
10 consumers that they have been exposed to lead from a number of The Nutrition Corners’
11 nutritional health products as set forth in paragraph 3 at levels exceeding the applicable
12 Maximum Allowable Dose Level (“MADL”) and requiring a warning pursuant to Health &
13 Safety Code section 25249.6.

14 II

15 PARTIES

16 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes,
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and
19 encouraging corporate responsibility.

20 3. All of the defendant entities that comprise The Nutrition Corners, while organized as
21 separate legal entities, are inter-connected with one another and each plays a role in the
22 promotion, referral, logistical support, development, manufacture, marketing, distribution
23 and/or sales of nutritional health products (“SUBJECT PRODUCTS”) that have exposed users
24 to lead in the State of California within the relevant statute of limitations period. These
25 SUBJECT PRODUCTS (as identified in the Notices of Violation dated January 21, 2021, April
26 13, 2021, April 22, 2021, April 30, 2021, and May 7, 2021 attached hereto as *Exhibits A, B, C,*
27 *D, E, and F*) are: (1) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition
28 Freedom, (2) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Blood,

1 Sweat & Tears, (3) 'Merica Labz Patriots Whey The Revolutionary's Protein Chubby Choco
2 Nutz, (4) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition White
3 Picket Fence, (5) 'Merica Labz Super Sized Whole Food Based Mass Gainer Fluffy Chubby
4 Nutz, (6) 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Freedom, (7) 'Merica Labz
5 Red, White & Boom High Caliber Preworkout Ammunition Lets Make 'Merica Grape Again,
6 (8) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition 'Merican Made,
7 (9) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Not Your
8 Granny's Apple, (10) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition
9 21 Fruit Salute, (11) 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Let's Make
10 'Merica Grape Again, (12) 'Merica Labz Red, White & Boom High Caliber Preworkout
11 Ammunition Cooperstown, (13) 'Merica Labz Stars 'N Pipes High Explosive Pump Agent
12 'Merican Made, (14) 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition
13 Giggle Pouch, (15) 'Merica Labz Suprimos Rocket's Red Glare, (16) 'Merica Labz Stars 'N
14 Pipes High Explosive Pump Agent Not Your Granny's Apple, (17) 'Merica Labz Stars 'N Pipes
15 High Explosive Pump Agent 21 Fruit Salute, (18) 'Merica Energy Red, White & Boom
16 'Merica's Energy Drink Impeachment, (19) 'Merica Labz Stars 'N Pipes High Explosive Pump
17 Agent White Picket Fence, (20) 'Merica Labz Stars 'N Pipes High Explosive Pump Agent
18 Giggle Pouch, (21) 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Cooperstown, (22)
19 'Merica Labz Super Sized Whole Food Based Mass Gainer Fruity Rebels, (23) 'Merica Labz
20 Suprimos Alpine Pew Pew, (24) Core Nutritionals Fury Next Generation Pre-Workout Black
21 Lightning, (25) 'Merica Energy Red, White & Boom 'Merica's Energy Drink 'Merican Classic,
22 (26) 'Merica Energy Red, White & Boom 'Merica's Energy Drink Justice, (27) Core Nutritionals
23 MRP Full-Spectrum Meal Supplement Rich Chocolate, (28) Core Nutritionals Pump Full-
24 Spectrum Non-Stimulant Pre-Workout Tropic Thunder, (29) Core Nutritionals Fury Next
25 Generation Pre-Workout Cherry Burst, (30) 'Merica Energy Red, White & Boom 'Merica's
26 Energy Drink Victory, (31) Core Nutritionals Grow Whole Food Based Mass Blend Chocolate
27 Bliss, (32) Core Nutritionals Pump Full-Spectrum Non-Stimulant Pre-Workout Black
28 Lightning, (33) Core Nutritionals Greens Premium Superfood Greens And Reds Blend Berry

1 Bliss, (34) Core Nutritionals Greens Premium Superfood Greens And Reds Blend Chocolate
2 Decadence, (35) 'Merica Energy Red, White & Boom 'Merica's Energy Drink Freedom, (36)
3 'Merica Energy Red, White & Boom 'Merica's Energy Drink Not Your Granny's Apple, (37)
4 'Merica Energy Red, White & Boom 'Merica's Energy Drink Let's Make 'Merica Grape Again,
5 (38) Core Nutritionals Intra Full Spectrum Intra workout Orange Dream, (39) Core Nutritionals
6 Fury Next Generation Pre-Workout Tropic Thunder, (40) Core Nutritionals PRO Sustained
7 Release Protein Blend Death By Chocolate, (41) Core Nutritionals Fury X Comprehensive
8 Energy And Pump Amplifier Australian Gummy Snakes, (42) Core Nutritionals Fury X
9 Comprehensive Energy And Pump Amplifier Star Candy, (43) Core Nutritionals Pump Full-
10 Spectrum Non-Stimulant Pre-Workout Cherry Burst, (44) Core Nutritionals PWO Post-
11 Workout Recovery Matrix Chocolate Brownie Batter, (45) Core Nutritionals PR Series Vegan
12 Gourmet Plant-Based Protein Blend Chocolate Brownie Batter, (46) Core Nutritionals PR
13 Series Vegan Gourmet Plant-Based Protein Blend Mixed Berry, (47) Core Nutritionals Grow
14 Whole Food Based Mass Blend Peanut Butter Pie, (48) Core Nutritionals MRP Full Spectrum
15 Meal Supplement Peanut Butter Oatmeal Cookie, (49) Core Nutritionals Pump Pre-Workout
16 Vasodilator And Performance Optimizer Pineapple Strawberry, (50) Core Nutritionals MRP
17 Full Spectrum Meal Supplement Vanilla Poundcake, and (51) Core Nutritionals ZZZ Night-
18 Time Recovery And Sleep Support Cherry Bomb.

19 4. ERC is informed and believes that there is a sufficient commingling of funds and assets
20 of the Defendants, a common equitable ownership amongst the Defendants, use of the same
21 offices and employees amongst the Defendants, a disregard of corporate formalities, identical
22 directors and officers and use of one or more Defendants as a shell or conduit for the affairs of
23 the other Defendants. Accordingly, there exists such a unity of interest and/or ownership
24 between the Defendants that the individuality and separateness between them for purposes of
25 whether Defendants are liable for violations of Proposition 65 ceased such that the Defendants
26 operate as a single enterprise and/or are the alter ego of each other. Viewing each Defendant
27 individually or separately would lead to an inequitable result.

28 5. Defendants Newport News Nutrition Corner, LLC, individually and dba The Nutrition

1 Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica
2 Labz, LLC; 'Merica Energy, LLC and Core Nutritionals LLC are companies subject to
3 Proposition 65 as they, either individually or together as a single enterprise, employ ten or more
4 persons and have employed ten or more persons at all times relevant to this action.

5 6. Defendants Does 1-100, are named herein under fictitious names, as their true names
6 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that
7 each of said Does is responsible, in some actionable manner, for the events and happenings
8 hereinafter referred to, either through said Does' conduct, or through the conduct of its agents,
9 servants or employees, or in some other manner, causing the harms alleged by ERC in this First
10 Amended Complaint. When said true names and capacities of Does are ascertained, ERC will
11 seek leave to amend this First Amended Complaint to set forth the same.

12 III

13 JURISDICTION AND VENUE

14 7. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,
15 which grants the Superior Court original jurisdiction in all causes except those given by statute
16 to other trial courts. The statute under which this action is brought does not specify any other
17 basis for jurisdiction.

18 8. This Court has jurisdiction over the Defendants because the Defendants have sufficient
19 minimum contacts with California, and otherwise intentionally avails themselves of the
20 California market through the promotion, collaboration, marketing, distribution, and/or sale of
21 the SUBJECT PRODUCTS in the State of California so as to render the exercise of jurisdiction
22 over the Defendants by the California courts consistent with traditional notions of fair play and
23 substantial justice.

24 9. The First Amended Complaint is based on allegations contained in the Notices of
25 Violation dated January 21, 2021, April 13, 2021, April 22, 2021, April 30, 2021, and May 7,
26 2021, served on the California Attorney General, other public enforcers, and The Nutrition
27 Corners. The Notices of Violation constitute adequate notice to The Nutrition Corners because
28 they provided adequate information to allow The Nutrition Corners to assess the nature of the

1 alleged violations, consistent with Proposition 65 and its implementing regulations. A
2 certificate of merit and a certificate of service accompanied each copy of the Notices of
3 Violation, and both certificates comply with Proposition 65 and its implementing regulations.
4 The Notices of Violation served on The Nutrition Corners also included a copy of “The Safe
5 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” Service of
6 the Notices of Violation and accompanying documents complied with Proposition 65 and its
7 implementing regulations. Attached hereto as *Exhibits A, B, C, D, E, and F* are true and
8 correct copies of the Notices of Violation and associated documents. More than 60 days have
9 passed since ERC mailed the Notices of Violation and no public enforcement entity has filed a
10 Complaint in this case.

11 10. This Court is the proper venue for the action because the causes of action have arisen in
12 the County of Alameda where some of the violations of law have occurred, and will continue to
13 occur, due to the ongoing sale of The Nutrition Corners’ products. Furthermore, venue is
14 proper in this Court under Code of Civil Procedure section 395.5 and Health & Safety Code
15 section 25249.7.

16 IV

17 STATUTORY BACKGROUND

18 11. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
19 passed as “Proposition 65” by an overwhelming majority vote of the people in November of
20 1986.

21 12. The warning requirement of Proposition 65 is contained in Health & Safety Code
22 section 25249.6, which provides:

23 No person in the course of doing business shall knowingly and
24 intentionally expose any individual to a chemical known to the state to
25 cause cancer or reproductive toxicity without first giving clear and
26 reasonable warning to such individual, except as provided in Section
27 25249.10.

28 13. The Office of Environmental Health Hazard Assessment (“OEHHA”), a division of Cal
EPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA

1 administers the Proposition 65 program and administers regulations that govern Proposition 65
2 in general, including warnings to comply with the statute. The warning regulations are found at
3 Title 27 of the California Code of Regulations, Article 6. The regulations define expose as “to
4 cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed
5 chemical. An individual may come into contact with a listed chemical through water, air, food,
6 consumer products and any other environmental exposure as well as occupational exposures.”
7 (Cal. Code Regs., tit. 27, § 25102, subd. (i).)

8 14. In this case, the exposures are caused by consumer products. A consumer product is
9 defined as “any article, or component part thereof, including food, that is produced, distributed,
10 or sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit.
11 27, § 25600.1, subd. (d).) Food “includes ‘dietary supplements’ as defined in California Code
12 of Regulations, title 17, section 10200.” (*Id.* at subd. (g).) A consumer product exposure is “an
13 exposure that results from a person’s acquisition, purchase, storage, consumption, or any
14 reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at
15 subd. (e).)

16 15. On August 30, 2016, the Office of Administrative Law approved the adoption of
17 OEHHA’s amendments to Article 6, Clear and Reasonable Warnings of the California Code of
18 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the
19 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed
20 sections with new regulations set forth in two new Subarticles to Article 6 that became
21 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning
22 Regulations provide, among other things, methods of transmission and content of warnings
23 deemed to comply with Proposition 65. The Nutrition Corners is subject to the warning
24 requirements set forth in the New Warning Regulations that became operative on August 30,
25 2018.

26 16. Health & Safety Code section 25249.6 provides that “No person in the course of doing
27 business shall knowingly and intentionally expose any individual to a chemical known to the
28 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning

1 to such individual” The New Warning Regulations apply when clear and reasonable
2 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,
3 consumer product warnings “must be prominently displayed on a label, labeling, or sign, and
4 must be displayed with such conspicuousness as compared with other words, statements,
5 designs or devices on the label, labeling, or sign, as to render the warning likely to be seen,
6 read, and understood by an ordinary individual under customary conditions of purchase or use.”
7 (*Id.* at § 25601, subd. (c).)

8 17. Proposition 65 establishes a procedure by which the State is to develop a list of
9 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
10 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after
11 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

12 18. Lead was listed as a chemical known to the State of California to cause developmental
13 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
14 listed as a chemical known to the State of California to cause cancer on October 1, 1992. (State
15 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986
16 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for
17 lead as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code
18 Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15
19 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

20 19. Proposition 65 provides that any person “violating or threatening to violate” Proposition
21 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
22 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
23 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
24 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
25 (Health & Safety Code, § 25249.7, subd. (b)(1).)

26 20. Proposition 65 may be enforced by any person in the public interest who provides notice
27 sixty days before filing suit to both the violator and designated law enforcement officials. The
28 failure of law enforcement officials to file a timely Complaint enables a citizen suit to be filed

1 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

2 V

3 **STATEMENT OF FACTS**

4 21. The Defendants have collaborated and provided logistical support to each other, and
5 promoted, developed, manufactured, marketed, distributed, and/or sold the SUBJECT
6 PRODUCTS containing lead into the State of California. Consumption of the SUBJECT
7 PRODUCTS according to the directions and/or recommendations provided for said products
8 cause consumers to be exposed to lead at levels exceeding the 0.5 micrograms per day MADL
9 and requiring a warning. Consumers have been ingesting these products for many years,
10 without any knowledge of their exposure to this very dangerous chemical.

11 22. For many years, The Nutrition Corners has knowingly and intentionally exposed
12 numerous persons to lead without providing any type of Proposition 65 warning. Prior to
13 ERC's Notices of Violation and this First Amended Complaint, The Nutrition Corners failed to
14 provide a warning on the labels of the SUBJECT PRODUCTS or provide any other legally
15 acceptable warning. The Nutrition Corners has, at all times relevant hereto, been aware that the
16 SUBJECT PRODUCTS contained lead and that persons using these products have been
17 exposed to this chemical. The Nutrition Corners has been aware of the presence of lead in the
18 SUBJECT PRODUCTS and has failed to disclose the presence of this chemical to the public,
19 who undoubtedly believe they have been ingesting totally healthy and pure products pursuant to
20 the company's statements.

21 23. Both prior and subsequent to ERC's Notices of Violation, The Nutrition Corners failed
22 to provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that
23 they have been exposed to a chemical known to the State of California to cause cancer, birth
24 defects and other reproductive harm. This failure to warn is ongoing.

25 **FIRST CAUSE OF ACTION**

26 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**
27 **Reasonable Warning under Proposition 65)**

28 24. ERC refers to paragraphs 1-23, inclusive, and incorporates them herein by this

1 reference.

2 25. By committing the acts alleged above, The Nutrition Corners has, in the course of doing
3 business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead, a
4 chemical known to the State of California to cause cancer, birth defects, and other reproductive
5 harm, without first giving clear and reasonable warning to such individuals within the meaning
6 of Health & Safety Code section 25249.6. In doing so, The Nutrition Corners has violated
7 Health & Safety Code section 25249.6 and continues to violate the statute with each successive
8 sale of the SUBJECT PRODUCTS.

9 26. Said violations render The Nutrition Corners liable for civil penalties, up to \$2,500 per
10 day for each violation and subject The Nutrition Corners to injunction.

11 **SECOND CAUSE OF ACTION**
12 **(Declaratory Relief)**

13 27. ERC refers to paragraphs 1-26, inclusive, and incorporates them herein by this
14 reference.

15 28. There exists an actual controversy relating to the legal rights and duties of the Parties,
16 within the meaning of Code of Civil Procedure section 1060, between ERC and The Nutrition
17 Corners, concerning whether The Nutrition Corners has exposed individuals to a chemical
18 known to the State of California to cause cancer, birth defects, and other reproductive harm
19 without providing clear and reasonable warning.

20 **VI**

21 **PRAYER**

22 WHEREFORE ERC prays for relief as follows:

23 1. On the First Cause of Action, for civil penalties for each and every violation according
24 to proof;

25 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
26 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive
27 orders, or other orders as are necessary to prevent The Nutrition Corners from exposing persons
28 to lead without providing clear and reasonable warning;

1 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
2 Procedure section 1060 declaring that The Nutrition Corners has exposed individuals to lead
3 without providing clear and reasonable warning; and

4 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
5 Procedure section 1021.5 or the substantial benefit theory;

6 5. For costs of suit herein; and

7 6. For such other relief as the Court may deem just and proper.
8

9 DATED: July 19, 2021

ENVIRONMENTAL RESEARCH CENTER, INC.

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11 _____
12 Charles W. Poss
13 In-House Counsel
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EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

January 21, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
'Merica Labz, LLC
Core Nutritionals LLC

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

- 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Freedom - Lead**

2. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Blood, Sweat & Tears - Lead
3. 'Merica Labz Patriots Whey The Revolutionary's Protein Chubby Choco Nutz – Lead
4. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition White Picket Fence - Lead
5. 'Merica Labz Super Sized Whole Food Based Mass Gainer Fluffy Chubby Nutz - Lead
6. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Freedom - Lead
7. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Lets Make 'Merica Grape Again - Lead
8. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition 'Merican Made - 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.

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 this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 21, 2018, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, 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 chemical, as well as an expensive and time-consuming litigation.

January 21, 2021

Page 3

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Newport News Nutrition Corner, LLC, individually and dba

The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition

Corners, 'Merica Labz, LLC, Core Nutritionals LLC and their Registered Agent for Service of Process
only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; and Core Nutritionals LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged 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 21, 2021

Chris Heptinstall

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 21, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Douglas Miller
(Registered Agent for Newport News Nutrition
Corner, LLC, individually and dba The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Douglas Miller
(Registered Agent for Arlington Nutrition
Corner, LLC, individually and The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Douglas Miller
(Registered Agent for 'Merica Labz, LLC)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Labz, LLC
604 Ware St SW
Vienna, VA 22180

Douglas Miller
(Registered Agent for Core Nutritionals LLC)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Core Nutritionals, LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
12551 Jefferson Ave, Ste 193
Newport News, VA 23602

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
44670 Cape Court Ste 150
Ashburn, VA 20147

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
44670 Cape Court Ste 150
Ashburn, VA 20147

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

January 21, 2021

Page 6

Current President or CEO
Core Nutritionals LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Merica Labz LLC
44670 Cape Court Ste 150
Ashburn, VA 20147

On January 21, 2021, 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
Post Office Box 70550
Oakland, CA 94612-0550

On January 21, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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
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7677 Oakport Street, Suite 650
Oakland, CA 94621
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 21, 2021

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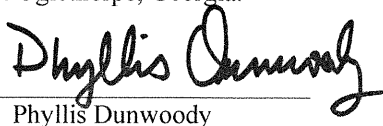
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Woodland, CA 95695
cfepd@yolocounty.org

On January 21, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 21, 2021, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
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245
Oroville, CA 95965

District Attorney, Colusa
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450 H Street, Room 171
Crescent City, CA 95531

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District Attorney, Kings
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Hanford, CA 93230

District Attorney, Lake County
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Los Angeles, CA 90012

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Alturas, CA 96101-4020

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200 East Santa Clara Street,
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San Jose, CA 95113

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



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

April 13, 2021

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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 Violator 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 Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, 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 attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

'Merica Energy, LLC

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

- 1. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Freedom - Lead**

2. **'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Blood, Sweat & Tears - Lead**
3. **'Merica Labz Patriots Whey The Revolutionary's Protein Chubby Choco Nutz – Lead**
4. **'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition White Picket Fence - Lead**
5. **'Merica Labz Super Sized Whole Food Based Mass Gainer Fluffy Chubby Nutz - Lead**
6. **'Merica Labz Stars 'N Pipes High Explosive Pump Agent Freedom - Lead**
7. **'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Lets Make 'Merica Grape Again - Lead**
8. **'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition 'Merican Made - 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.

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 this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 13, 2018, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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 Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, 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 chemical, as well as an expensive and time-consuming litigation.

April 13, 2021

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Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to 'Merica Energy, LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by 'Merica Energy, LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: April 13, 2021

Chris Heptinstall

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 April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Merica Energy, LLC
44670 Cape Court Ste 150
Ashburn, VA 20147

Current President or CEO
Merica Energy, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Douglas Miller
(Registered Agent for Merica Energy, LLC)
604 Ware St SW
Vienna, VA 22180

On April 13, 2021, 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
Post Office Box 70550
Oakland, CA 94612-0550

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

April 13, 2021

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

April 13, 2021

Page 7

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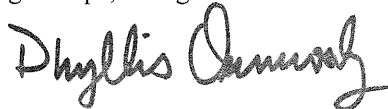
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Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

On April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 13, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

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Jackson, CA 95642

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

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

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

District Attorney, El Dorado
County
778 Pacific St.
Placerville, CA 95667

District Attorney, Fresno
County
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Fresno, CA 93721

District Attorney, Glenn
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El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
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District Attorney, Kings
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1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
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Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
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Los Angeles, CA 90012

District Attorney, Madera
County
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Madera, CA 93637

District Attorney, Marin
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Room 130
San Rafael, CA 94903

District Attorney, Mendocino
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District Attorney, Modoc
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Alturas, CA 96101-4020

District Attorney, Mono
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District Attorney, Orange
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Santa Ana, CA 92703

District Attorney, San Benito
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District Attorney, San
Bernardino County
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San Bernadino, CA 92415

District Attorney, San Mateo
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Redwood City, CA 94063

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200 East Santa Clara Street,
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San Jose, CA 95113

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 C



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

April 13, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
'Merica Labz, LLC
'Merica Energy, LLC
Core Nutritionals LLC

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

1. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Not Your Granny's Apple - Lead
2. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition 21 Fruit Salute - Lead
3. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Let's Make 'Merica Grape Again - Lead
4. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Cooperstown - Lead
5. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent 'Merican Made - Lead
6. 'Merica Labz Red, White & Boom High Caliber Preworkout Ammunition Giggle Pouch - Lead
7. 'Merica Labz Suprimos Rocket's Red Glare - Lead
8. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Not Your Granny's Apple - Lead
9. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent 21 Fruit Salute - Lead
10. 'Merica Energy Red, White & Boom 'Merica's Energy Drink Impeachment - 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.

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 this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 13, 2018, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, or provide appropriate warnings on the labels of these products; (2) pay an

April 13, 2021

Page 3

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 chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; Core Nutritionals LLC and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; and Core Nutritionals LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: April 13, 2021

Chris Heptinstall

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 April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Labz, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Current President or CEO
'Merica Labz, LLC
44670 Cape Court Ste 150
Ashburn, VA 20147

Current President or CEO
'Merica Labz, LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Energy, LLC
44670 Cape Court Ste 150
Ashburn, VA 20147

Current President or CEO
Core Nutritionals LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Energy, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
12551 Jefferson Ave, Ste 193
Newport News, VA 23602

Douglas Miller
(Registered Agent for Newport News Nutrition
Corner, LLC, individually and dba The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
22370 Davis Drive, Ste 100
Sterling, VA 20164

Douglas Miller
(Registered Agent for Arlington Nutrition
Corner, LLC, individually and The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

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

April 13, 2021

Page 6

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
44670 Cape Court Ste 150
Ashburn, VA 20147

Douglas Miller
(Registered Agent for 'Merica Labz, LLC)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
44670 Cape Court Ste 150
Ashburn, VA 20147

Douglas Miller
(Registered Agent for Core Nutritionals LLC)
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Current President or CEO
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22370 Davis Drive, Ste 100
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Current President or CEO
Core Nutritionals LLC
1417 Wilkesboro Hwy
Statesville, NC 28625

Douglas Miller
(Registered Agent for 'Merica Energy, LLC)
604 Ware St SW
Vienna, VA 22180

On April 13, 2021, 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
Post Office Box 70550
Oakland, CA 94612-0550

On April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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
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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
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168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

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

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Page 7

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David Hollister, District Attorney
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Quincy, CA 95971
davidhollister@countyofplumas.com

Paul E. Zellerbach, District Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 13, 2021

Page 8

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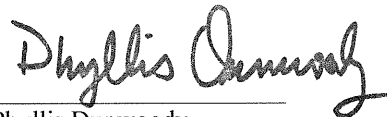
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Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

On April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** **CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 13, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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

District Attorney, Amador
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Jackson, CA 95642

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

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

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

District Attorney, El Dorado
County
778 Pacific St.
Placerville, CA 95667

District Attorney, Fresno
County
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Fresno, CA 93721

District Attorney, Glenn
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District Attorney, Humboldt
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District Attorney, Imperial
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El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
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District Attorney, Kings
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1400 West Lacey Boulevard
Hanford, CA 93230

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

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

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

District Attorney, Marin
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Room 130
San Rafael, CA 94903

District Attorney, Mendocino
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Ukiah, CA 95482

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

District Attorney, Mono
County
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District Attorney, Orange
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Santa Ana, CA 92703

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District Attorney, San
Bernardino County
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San Bernadino, CA 92415

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200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

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 D



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

April 22, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

**Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
'Merica Labz, LLC
'Merica Energy, LLC
Core Nutritionals LLC**

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

1. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent White Picket Fence - Lead
2. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Giggle Pouch - Lead
3. 'Merica Labz Stars 'N Pipes High Explosive Pump Agent Cooperstown - Lead
4. 'Merica Labz Super Sized Whole Food Based Mass Gainer Fruity Rebels - Lead
5. 'Merica Labz Suprimos Alpine Pew Pew - Lead
6. Core Nutritionals Fury Next Generation Pre-Workout Black Lightning - Lead
7. 'Merica Energy Red, White & Boom 'Merica's Energy Drink 'Merican Classic - Lead
8. 'Merica Energy Red, White & Boom 'Merica's Energy Drink Justice - Lead
9. Core Nutritionals MRP Full-Spectrum Meal Supplement Rich Chocolate - Lead
10. Core Nutritionals Pump Full-Spectrum Non-Stimulant Pre-Workout Tropic Thunder - 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.

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 this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 22, 2018, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, 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

April 22, 2021

Page 3

three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; Core Nutritionals LLC and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; and Core Nutritionals LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: April 22, 2021

Chris Heptinstall

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 April 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Labz, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Current President or CEO
'Merica Labz, LLC
44670 Cape Court Ste 150
Ashburn, VA 20147

Current President or CEO
'Merica Labz, LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Energy, LLC
44670 Cape Court Ste 150
Ashburn, VA 20147

Current President or CEO
Core Nutritionals LLC
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Energy, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
12551 Jefferson Ave, Ste 193
Newport News, VA 23602

Douglas Miller
(Registered Agent for Newport News Nutrition
Corner, LLC, individually and dba The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
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and dba The Nutrition Corners
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Sterling, VA 20164

Douglas Miller
(Registered Agent for Arlington Nutrition
Corner, LLC, individually and The
Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

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

April 22, 2021

Page 6

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Ashburn, VA 20147

Douglas Miller
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Current President or CEO
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Douglas Miller
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Current President or CEO
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Current President or CEO
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Current President or CEO
Core Nutritionals LLC
1417 Wilkesboro Hwy
Statesville, NC 28625

Douglas Miller
(Registered Agent for 'Merica Energy, LLC)
604 Ware St SW
Vienna, VA 22180

On April 22, 2021, 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
Post Office Box 70550
Oakland, CA 94612-0550

On April 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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
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7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Stacey Grassini, Deputy District Attorney
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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
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Independence, CA 93526
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 22, 2021

Page 7

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Mark Ankcorn, Deputy City Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 22, 2021

Page 8

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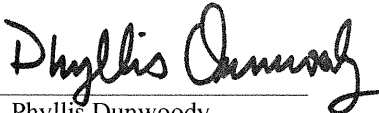
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jbarnes@sonoma-county.org

Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

On April 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 22, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
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District Attorney, Butte
County
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245
Oroville, CA 95965

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

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

District Attorney, El Dorado
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District Attorney, Fresno
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District Attorney, Glenn
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District Attorney, Humboldt
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Bakersfield, CA 93301

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Hall of Justice
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District Attorney, Madera
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District Attorney, Marin
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District Attorney, Mendocino
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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 E



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

April 30, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

**Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
'Merica Labz, LLC
'Merica Energy, LLC
Core Nutritionals LLC**

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

1. **Core Nutritionals Fury Next Generation Pre-Workout Cherry Burst - Lead**
2. **'Merica Energy Red, White & Boom 'Merica's Energy Drink Victory - Lead**
3. **Core Nutritionals Grow Whole Food Based Mass Blend Chocolate Bliss - Lead**
4. **Core Nutritionals Pump Full-Spectrum Non-Stimulant Pre-Workout Black Lightning - Lead**
5. **Core Nutritionals Greens Premium Superfood Greens And Reds Blend Berry Bliss - Lead**
6. **Core Nutritionals Greens Premium Superfood Greens And Reds Blend Chocolate Decadence - Lead**
7. **'Merica Energy Red, White & Boom 'Merica's Energy Drink Freedom- Lead**
8. **'Merica Energy Red, White & Boom 'Merica's Energy Drink Not Your Granny's Apple - Lead**
9. **'Merica Energy Red, White & Boom 'Merica's Energy Drink Let's Make 'Merica Grape Again - Lead**
10. **Core Nutritionals Intra Full Spectrum Intraworkout Orange Dream - 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.

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 this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 30, 2018, 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 this known toxic chemical is 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 chemical. 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 this chemical.

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 chemical, or provide appropriate warnings on the labels of these products; (2) pay an

April 30, 2021

Page 3

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 chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; Core Nutritionals LLC and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; and Core Nutritionals LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: April 30, 2021

Chris Heptinstall

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 April 30, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
604 Ware St SW
Vienna, VA 22180

Current President or CEO
'Merica Labz, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
Arlington Nutrition Corner, LLC, individually
and dba The Nutrition Corners
820 N Pollard St RTL #3
Arlington, VA 22203

Current President or CEO
'Merica Energy, LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Current President or CEO
'Merica Labz, LLC
604 Ware St SW
Vienna, VA 22180

Douglas Miller
(Registered Agent for Newport News Nutrition
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Nutrition Corners)
604 Ware St SW
Vienna, VA 22180

Current President or CEO
Core Nutritionals LLC
604 Ware St SW
Vienna, VA 22180

Douglas Miller
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Corner, LLC, individually and The
Nutrition Corners)
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

April 30, 2021

Page 6

Current President or CEO
Core Nutritionals LLC
1417 Wilkesboro Hwy
Statesville, NC 28625

Current President or CEO
Core Nutritionals LLC
22370 Davis Drive, Ste 100
Sterling, VA 20164

Douglas Miller
(Registered Agent for 'Merica Energy, LLC)
604 Ware St SW
Vienna, VA 22180

On April 30, 2021, 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
Post Office Box 70550
Oakland, CA 94612-0550

On April 30, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

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

April 30, 2021

Page 7

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

April 30, 2021

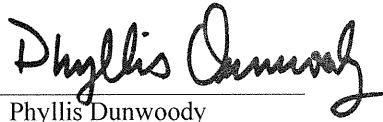
Page 8

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Ventura, CA 93009
daspecialops@ventura.org

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

On April 30, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 30, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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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 F



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

May 7, 2021

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

**Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners
Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners
'Merica Labz, LLC
'Merica Energy, LLC
Core Nutritionals LLC**

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

1. **Core Nutritionals Fury Next Generation Pre-Workout Tropic Thunder - Lead**
2. **Core Nutritionals PRO Sustained Release Protein Blend Death By Chocolate - Lead**
3. **Core Nutritionals Fury X Comprehensive Energy And Pump Amplifier Australian Gummy Snakes - Lead**
4. **Core Nutritionals Fury X Comprehensive Energy And Pump Amplifier Star Candy - Lead**
5. **Core Nutritionals Pump Full-Spectrum Non-Stimulant Pre-Workout Cherry Burst - Lead**
6. **Core Nutritionals PWO Post-Workout Recovery Matrix Chocolate Brownie Batter - Lead**
7. **Core Nutritionals PR Series Vegan Gourmet Plant-Based Protein Blend Chocolate Brownie Batter - Lead**
8. **Core Nutritionals PR Series Vegan Gourmet Plant-Based Protein Blend Mixed Berry - Lead**
9. **Core Nutritionals Grow Whole Food Based Mass Blend Peanut Butter Pie - Lead**
10. **Core Nutritionals MRP Full Spectrum Meal Supplement Peanut Butter Oatmeal Cookie - Lead**
11. **Core Nutritionals Pump Pre-Workout Vasodilator And Performance Optimizer Pineapple Strawberry - Lead**
12. **Core Nutritionals MRP Full Spectrum Meal Supplement Vanilla Poundcake - Lead**
13. **Core Nutritionals ZZZ Night-Time Recovery And Sleep Support Cherry Bomb - 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.

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 this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 7, 2018, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and

May 7, 2021

Page 3

reasonable warning be provided prior to exposure to the identified chemical. 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 this chemical.

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 chemical, 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 chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; Core Nutritionals LLC and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Newport News Nutrition Corner, LLC, individually and dba The Nutrition Corners; Arlington Nutrition Corner, LLC, individually and dba The Nutrition Corners; 'Merica Labz, LLC; 'Merica Energy, LLC; and Core Nutritionals LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: May 7, 2021

Chris Heptinstall

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 May 7, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Newport News Nutrition Corner, LLC, individually
and dba The Nutrition Corners; Arlington Nutrition Corner, LLC,
individually and dba The Nutrition Corners;
'Merica Labz, LLC; 'Merica Energy, LLC; and
Core Nutritionals LLC
c/o Garth N. Ward
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th St, Ste 4000
Los Angeles, Ca 90071
Email: Garth.Ward@lewisbrisbois.com

On May 7, 2021, 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
Post Office Box 70550
Oakland, CA 94612-0550

On May 7, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

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

May 7, 2021

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

May 7, 2021

Page 7

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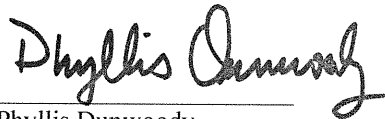
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Executed on May 7, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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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.