

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard T. Drury SBN 163559 Brian B. Flynn SBN 314005 Lozeau   Drury LLP 1939 Harrison St, Suite 150 Oakland, CA 94612 TELEPHONE NO.: 510-836-4200 FAX NO.: ATTORNEY FOR (Name): <b>Plaintiff Environmental Research Center, Inc. (ERC)</b>	<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of Alameda <b>10/20/2022 at 01:43:31 PM</b> By: Xian-xii Bowie, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda</b> STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson	CASE NUMBER: <div style="font-size: 1.2em; font-weight: bold;">22CV020100</div>
CASE NAME: <b>Environmental Research Center, Inc. v. Healthy Truth LLC et al.</b>	JUDGE: DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

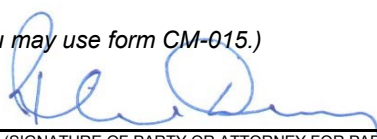
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): 2

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 20, 2022  
 Richard T. Drury  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

### CASE TYPES AND EXAMPLES

#### Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

#### Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice–Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

#### Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

#### Employment

Wrongful Termination (36)  
Other Employment (15)

#### Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case–Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

#### Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

#### Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

#### Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ–Administrative Mandamus  
Writ–Mandamus on Limited Court Case Matter  
Writ–Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal–Labor Commissioner Appeals

#### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

#### Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

#### Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

#### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

F. ADDENDUM TO CIVIL CASE COVER SHEET

<b>Short Title:</b> Environmental Research Center, Inc. v. Healthy Truth LLC et al.	<b>Case Number:</b>
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**CIVIL CASE COVER SHEET ADDENDUM**

**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)	<input type="checkbox"/> Hayward Hall of Justice (447)
<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)	

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) <b>Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no</b>
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)
	Product liability (24)	<input type="checkbox"/> 89 Product liability ( <u>not</u> asbestos or toxic tort/environmental) (G)
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)
		<input type="checkbox"/> 53 Labor comm award confirmation
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)
	Collections (09)	<input type="checkbox"/> 81 Collections (G)
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs
		<b>Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No</b>
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review
		<b>Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No</b>
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment
		<input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)
	Other complaint (42)	<input checked="" type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name
		<input type="checkbox"/> 69 Other petition



SHORT TITLE: Environmental Research Center, Inc. v. Healthy Truth LLC, et al.	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

**List additional parties** (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

ORGANIC LIVING SUPERFOODS, LLC, individually and dba HEALTHY TRUTH; and DOES 1-100

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**10/20/2022 at 01:43:31 PM**

By: Xian-xii Bowie,  
Deputy Clerk

1 RICHARD T. DRURY (SBN 163559)  
2 BRIAN B. FLYNN (SBN 314005)  
3 LOZEAU | DRURY LLP  
4 1939 Harrison Street, Suite 150  
5 Oakland, CA 94612  
6 Ph: 510-836-4200  
7 Email: richard@lozeaudrury.com  
8 brian@lozeaudrury.com

Attorneys for Plaintiff Environmental Research Center, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

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

**Plaintiff,**

**vs.**

**HEALTHY TRUTH LLC, individually and  
dba ORGANIC LIVING SUPERFOODS;  
ORGANIC LIVING SUPERFOODS, LLC,  
individually and dba HEALTHY TRUTH;  
and DOES 1-100,**

**Defendants.**

**CASE NO. 22CV020100**

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

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

19  
20 Plaintiff Environmental Research Center, Inc. hereby alleges:

21 **I. INTRODUCTION**

22 1. Plaintiff Environmental Research Center, Inc. (hereinafter “Plaintiff” or “ERC”) brings  
23 this action as a private attorney general enforcer and in the public interest pursuant to Health &  
24 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement  
25 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as “Proposition 65,”  
26 mandates that businesses with ten or more employees must provide a “clear and reasonable  
27 warning” prior to exposing any individual to a chemical known to the state to cause cancer or  
28 reproductive toxicity. Lead, cadmium, and mercury are chemicals known to the State of

1 California to cause cancer and/or birth defects and other reproductive harm. This Complaint  
2 seeks injunctive and declaratory relief and civil penalties to remedy the ongoing failure of  
3 Defendants Healthy Truth LLC, individually and dba Organic Living Superfoods and Organic  
4 Living Superfoods, LLC, individually and dba Healthy Truth (collectively “Healthy Truth”) and  
5 Does 1-100 (hereinafter individually referred to as “Defendant” or collectively as  
6 “Defendants”), to warn consumers that they have been exposed to lead and/or cadmium and/or  
7 mercury from a number of Healthy Truth’s nutritional health products as set forth in paragraph  
8 3 at levels exceeding the applicable Maximum Allowable Dose Level (“MADL”) and requiring  
9 a warning pursuant to Health & Safety Code section 25249.6.

## 10 **II. PARTIES**

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

15 3. Defendant Healthy Truth is a business that develops, manufactures, markets, distributes,  
16 and/or sells nutritional health products that have exposed users to lead and/or cadmium and/or  
17 mercury in the State of California within the relevant statute of limitations period. These  
18 “SUBJECT PRODUCTS” (as identified in the Notices of Violation dated May 3, 2022, May 10,  
19 2022, May 17, 2022, and July 6, 2022 attached hereto as *Exhibits A, B, C, and D*) are: (1)  
20 Healthy Truth Performance + Recovery Go Pro Cacao (lead, cadmium), (2) Healthy Truth  
21 Performance + Recovery Go Green Unflavored (lead), (3) Healthy Truth Performance +  
22 Recovery Go Red Super Berry (lead), (4) Healthy Truth Performance + Recovery Go Gold  
23 Lemon + Ginger (lead), (5) Healthy Truth Raw Maca Root Powder (lead), (6) Healthy Truth  
24 Raw Spirulina Powder (lead), (7) Healthy Truth Caffeine-Free Golden Milk Pumpkin Spice  
25 Latte (lead), (8) Healthy Truth Raw Cacao Powder (lead, cadmium), (9) Healthy Truth Organic  
26 Living Superfoods Crunch Time Sprouted Banana Protein Crunch (cadmium, mercury), (10)  
27 Healthy Truth Caffeine-Free Golden Milk Cinnamon Spice Latte (lead), (11) Healthy Truth  
28 Performance + Recovery Go Pro Unflavored (lead), (12) Healthy Truth Performance +

1 Recovery Go Pre-Workout Sweet Beet (lead), (13) Healthy Truth Performance + Recovery  
2 Plant Based Protein Bar Cacao (lead, cadmium), (14) Healthy Truth Performance + Recovery  
3 Plant Based Protein Bar Mixed Berry (cadmium), (15) Organic Living Superfoods Life by  
4 Chocolate Superfruit Mix (lead), (16) Organic Living Superfoods Life by Chocolate Dark  
5 Chocolate Coconut Chips (lead, cadmium), (17) Organic Living Superfoods Crunch Time  
6 Sprouted Ceylon Cinnamon Crunch (lead), and (18) Organic Living Superfoods Crunch Time  
7 Sprouted Blueberry Hemp Protein Crunch (cadmium). Healthy Truth LLC, individually and dba  
8 Organic Living Superfoods and Organic Living Superfoods, LLC, individually and dba Healthy  
9 Truth are companies subject to Proposition 65 as they employ ten or more persons and have  
10 employed ten or more persons at all times relevant to this action.

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

### 18 **III. JURISDICTION AND VENUE**

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

23 6. This Court has jurisdiction over Healthy Truth because Healthy Truth has sufficient  
24 minimum contacts with California, and otherwise intentionally avails itself of the California  
25 market through the marketing, distribution, and/or sale of the SUBJECT PRODUCTS in the  
26 State of California so as to render the exercise of jurisdiction over it by the California courts  
27 consistent with traditional notions of fair play and substantial justice.

28 7. The Complaint is based on allegations contained in the Notices of Violation dated



1 May 3, 2022, May 10, 2022, May 17, 2022, and July 6, 2022 served on the California Attorney  
2 General, other public enforcers, and Healthy Truth. The Notices of Violation constitute  
3 adequate notice to Healthy Truth because they provided adequate information to allow Healthy  
4 Truth to assess the nature of the alleged violations, consistent with Proposition 65 and its  
5 implementing regulations. A certificate of merit and a certificate of service accompanied each  
6 copy of the Notices of Violation, and both certificates comply with Proposition 65 and its  
7 implementing regulations. The Notices of Violation served on Healthy Truth also included a  
8 copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
9 Summary.” Service of the Notices of Violation and accompanying documents complied with  
10 Proposition 65 and its implementing regulations. Attached hereto as *Exhibits A, B, C, and D*  
11 are true and correct copies of the Notices of Violation and associated documents. More than 60  
12 days have passed since ERC mailed the Notices of Violation and no public enforcement entity  
13 has filed a Complaint in this case.

14 8. This Court is the proper venue for the action because the causes of action have arisen in  
15 the County of Alameda where some of the violations of law have occurred, and will continue to  
16 occur, due to the ongoing sale of Healthy Truth’s products. Furthermore, venue is proper in this  
17 Court under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

18 **IV. STATUTORY BACKGROUND**

19 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
20 passed as “Proposition 65” by an overwhelming majority vote of the people in November of  
21 1986.

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

24 No person in the course of doing business shall knowingly and  
25 intentionally expose any individual to a chemical known to the state to  
26 cause cancer or reproductive toxicity without first giving clear and  
27 reasonable warning to such individual, except as provided in Section  
28 25249.10.

11. 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 12. 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 13. 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. Healthy Truth is subject to the warning requirements  
24 set forth in the New Warning Regulations that became operative on August 30, 2018.

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

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

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

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

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

26 18. Mercury and mercury compounds were listed as chemicals known to the State of  
27 California to cause developmental toxicity in the fetus and male and female reproductive  
28 toxicity on July 1, 1990 (State of California EPA OEHHA Safe Drinking Water and Toxic

1 Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and Reproductive  
2 Toxicity).

3 19. Proposition 65 provides that any person “violating or threatening to violate” Proposition  
4 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,  
5 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial  
6 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)  
7 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.  
8 (Health & Safety Code, § 25249.7, subd. (b)(1).)

9 20. Proposition 65 may be enforced by any person in the public interest who provides notice  
10 sixty days before filing suit to both the violator and designated law enforcement officials. The  
11 failure of law enforcement officials to file a timely Complaint enables a citizen suit to be filed  
12 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

13 **V. STATEMENT OF FACTS**

14 21. Healthy Truth has developed, manufactured, marketed, distributed, and/or sold the  
15 SUBJECT PRODUCTS containing lead and/or cadmium and/or mercury into the State of  
16 California. Consumption of the SUBJECT PRODUCTS according to the directions and/or  
17 recommendations provided for said products causes consumers to be exposed to lead at levels  
18 exceeding the 0.5 micrograms per day MADL and/or cadmium at levels exceeding the 4.1  
19 micrograms of cadmium per day MADL and/or exposed to mercury and requiring a warning.  
20 Consumers have been ingesting these products for many years, without any knowledge of their  
21 exposure to these very dangerous chemicals.

22 22. For many years, Healthy Truth has knowingly and intentionally exposed numerous  
23 persons to lead and/or cadmium and/or mercury without providing any type of Proposition 65  
24 warning. Prior to ERC’s Notices of Violation and this Complaint, Healthy Truth failed to  
25 provide a warning on the labels of the SUBJECT PRODUCTS or provide any other legally  
26 acceptable warning. Healthy Truth has, at all times relevant hereto, been aware that the  
27 SUBJECT PRODUCTS contained lead and/or cadmium and/or mercury and that persons using  
28 these products have been exposed to these chemicals. Healthy Truth has been aware of the

1 presence of lead and/or cadmium and/or mercury in the SUBJECT PRODUCTS and has failed  
2 to disclose the presence of these chemicals to the public, who undoubtedly believe they have  
3 been ingesting totally healthy and pure products pursuant to the company's statements.

4 23. Both prior and subsequent to ERC's Notices of Violation, Healthy Truth failed to  
5 provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning that they  
6 have been exposed to chemicals known to the State of California to cause cancer and/or birth  
7 defects and other reproductive harm. This failure to warn is ongoing.

8 **FIRST CAUSE OF ACTION**  
9 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**  
10 **Reasonable Warning under Proposition 65)**

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

13 25. By committing the acts alleged above, Healthy Truth has, in the course of doing  
14 business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to lead  
15 and/or cadmium and/or mercury, chemicals known to the State of California to cause cancer  
16 and/or birth defects and other reproductive harm, without first giving clear and reasonable  
17 warning to such individuals within the meaning of Health & Safety Code section 25249.6. In  
18 doing so, Healthy Truth has violated Health & Safety Code section 25249.6 and continues to  
19 violate the statute with each successive sale of the SUBJECT PRODUCTS.

20 26. Said violations render Healthy Truth liable for civil penalties, up to \$2,500 per day for  
21 each violation, and subject Healthy Truth to injunction.

22 **SECOND CAUSE OF ACTION**  
23 **(Declaratory Relief)**

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

26 28. There exists an actual controversy relating to the legal rights and duties of the Parties,  
27 within the meaning of Code of Civil Procedure section 1060, between ERC and Healthy Truth,  
28 concerning whether Healthy Truth has exposed individuals to chemicals known to the State of

1 California to cause cancer and/or birth defects and other reproductive harm without providing  
2 clear and reasonable warning.

3 **VI. PRAYER**

4 WHEREFORE ERC prays for relief as follows:

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

7 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,  
8 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive  
9 orders, or other orders as are necessary to prevent Healthy Truth from exposing persons to lead  
10 and/or cadmium and/or mercury without providing clear and reasonable warning;

11 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
12 Procedure section 1060 declaring that Healthy Truth has exposed individuals to lead and/or  
13 cadmium and/or mercury without providing clear and reasonable warning; and

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

16 5. For costs of suit herein; and

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

18  
19  
20 DATED: October 20, 2022

LOZEAU | DRURY LLP

21  
22 

23 Richard T. Drury  
24 Brian B. Flynn  
25 Attorneys for Plaintiff  
26 Environmental Research Center, Inc.  
27  
28

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# EXHIBIT A



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

**VIA ELECTRONIC MAIL**

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

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

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

**VIA ELECTRONIC MAIL**

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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



VIA ELECTRONIC MAIL

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcdca.org

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

VIA ELECTRONIC MAIL

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

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

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

**VIA ELECTRONIC MAIL**

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

**VIA ELECTRONIC MAIL**

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

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Healthy Truth LLC, individually and dba Organic Living Superfoods  
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

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

- 1. Healthy Truth Performance + Recovery Go Pro Cacao - Lead, Cadmium**
- 2. Healthy Truth Performance + Recovery Go Green Unflavored - Lead**

- 3. Healthy Truth Performance + Recovery Go Red Super Berry - Lead**
- 4. Healthy Truth Performance + Recovery Go Gold Lemon + Ginger - Lead**
- 5. Healthy Truth Raw Maca Root Powder - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since May 3, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

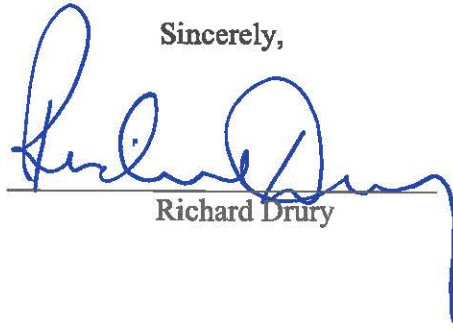


May 3, 2022

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

Sincerely,



Richard Drury

**Attachments**

**Certificate of Merit**

**Certificate of Service**

**OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth and their Registered Agents for Service of Process only)**

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

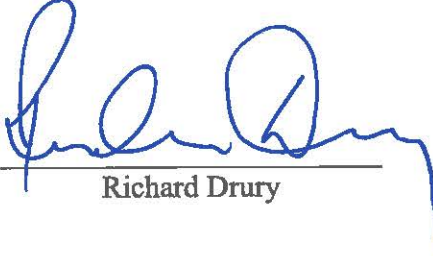
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 3, 2022

  
Richard Drury

**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 3, 2022, 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 CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

On May 3, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 3, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

May 3, 2022

Page 8

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcda.org

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

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

May 3, 2022

Page 9

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

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

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

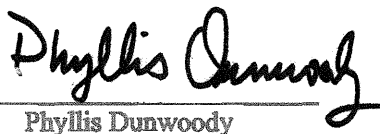
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On May 3, 2022, 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 May 3, 2022, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody



Service List

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

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

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

District Attorney, Colusa County  
310 6<sup>th</sup> St  
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, Glenn County  
Post Office Box 430  
Willows, CA 95988

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

District Attorney, Imperial County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

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

District Attorney, Los Angeles County  
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 County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San Benito County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
303 West Third Street  
San Bernadino, CA 92415

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

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

District Attorney, Sierra County  
Post Office Box 457  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

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

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

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

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> 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](mailto: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



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

**VIA ELECTRONIC MAIL**

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

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

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

**VIA ELECTRONIC MAIL**

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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



**VIA ELECTRONIC MAIL**

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcca.org

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

**VIA ELECTRONIC MAIL**

Alexandra Grayner, Assistant District  
Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

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

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

**VIA ELECTRONIC MAIL**

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

**VIA ELECTRONIC MAIL**

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

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Healthy Truth LLC, individually and dba Organic Living Superfoods  
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

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

- 1. Healthy Truth Raw Spirulina Powder - Lead**
- 2. Healthy Truth Caffeine-Free Golden Milk Pumpkin Spice Latte - Lead**

- 3. Healthy Truth Raw Cacao Powder – Lead, Cadmium**
- 4. Healthy Truth Organic Living Superfoods Crunch Time Sprouted Banana Protein Crunch – Cadmium, Mercury**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium and/or mercury. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium and/or mercury. Each of these ongoing violations has occurred on every day since May 10, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

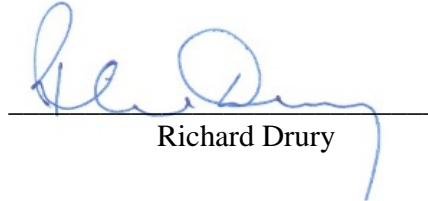
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 10, 2022

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

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth and their Registered Agents for Service of Process only)

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

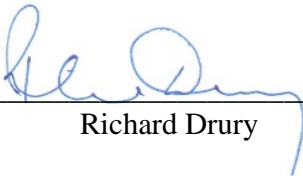
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 10, 2022

  
Richard Drury

**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 10, 2022, 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 CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

On May 10, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 10, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

May 10, 2022

Page 8

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

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

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

May 10, 2022

Page 9

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

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

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

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

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

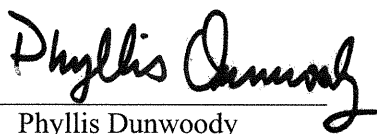
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

On May 10, 2022, 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 May 10, 2022, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody



**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
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, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

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

District Attorney,  
Imperial County  
940 West Main Street,  
Ste 102  
El Centro, CA 92243

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey  
Boulevard  
Hanford, CA 93230

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

District Attorney, Los  
Angeles County  
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  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA  
92415

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

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

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste  
4500  
Fairfield, CA 94533

District Attorney,  
Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

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

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

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

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> 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](mailto: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



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

**VIA ELECTRONIC MAIL**

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

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

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

**VIA ELECTRONIC MAIL**

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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



May 17, 2022

Page 2

**VIA ELECTRONIC MAIL**

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcda.org

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

**VIA ELECTRONIC MAIL**

Alexandra Grayner, Assistant District  
Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

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

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

May 17, 2022

Page 3

**VIA ELECTRONIC MAIL**

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

**VIA ELECTRONIC MAIL**

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

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Healthy Truth LLC, individually and dba Organic Living Superfoods  
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

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

- 1. Healthy Truth Caffeine-Free Golden Milk Cinnamon Spice Latte - Lead**
- 2. Healthy Truth Performance + Recovery Go Pro Unflavored - Lead**

- 3. Healthy Truth Performance + Recovery Go Pre-Workout Sweet Beet - Lead**
- 4. Healthy Truth Performance + Recovery Plant Based Protein Bar Cacao – Lead, Cadmium**
- 5. Healthy Truth Performance + Recovery Plant Based Protein Bar Mixed Berry - Cadmium**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since May 17, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

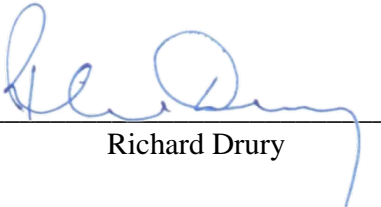
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 17, 2022

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

Sincerely,



---

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth and their Registered Agents for Service of Process only)

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

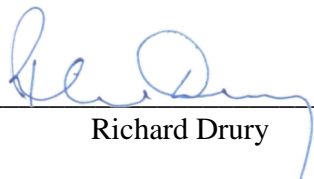
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 17, 2022

  
Richard Drury

**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 17, 2022, 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 CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

May 17, 2022

Page 8

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

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

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 17, 2022  
Page 9

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

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

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

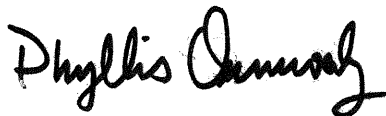
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On May 17, 2022, 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 May 17, 2022, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody



**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
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, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

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

District Attorney,  
Imperial County  
940 West Main Street,  
Ste 102  
El Centro, CA 92243

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey  
Boulevard  
Hanford, CA 93230

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

District Attorney, Los  
Angeles County  
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  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA  
92415

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

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

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste  
4500  
Fairfield, CA 94533

District Attorney,  
Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

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

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

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

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> 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](mailto: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



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

**VIA ELECTRONIC MAIL**

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

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

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

**VIA ELECTRONIC MAIL**

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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



July 6, 2022

Page 2

**VIA ELECTRONIC MAIL**

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcca.org

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

**VIA ELECTRONIC MAIL**

Alexandra Grayner, Assistant District  
Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

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

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

**VIA ELECTRONIC MAIL**

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

**VIA ELECTRONIC MAIL**

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

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

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

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

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

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Healthy Truth LLC, individually and dba Organic Living Superfoods  
Organic Living Superfoods, LLC, individually and dba Healthy Truth**

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

- 1. Organic Living Superfoods Life by Chocolate Superfruit Mix - Lead**

- 2. Organic Living Superfoods Life by Chocolate Dark Chocolate Coconut Chips – Lead, Cadmium**
- 3. Organic Living Superfoods Crunch Time Sprouted Ceylon Cinnamon Crunch - Lead**
- 4. Organic Living Superfoods Crunch Time Sprouted Blueberry Hemp Protein Crunch - Cadmium**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or cadmium. Each of these ongoing violations has occurred on every day since July 6, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

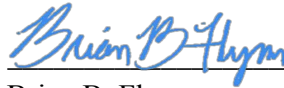
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

July 6, 2022

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

Sincerely,



---

Brian B. Flynn

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth 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 Healthy Truth LLC, individually and dba Organic Living Superfoods; Organic Living Superfoods, LLC, individually and dba Healthy Truth**

I, Brian B. Flynn, declare:

1. This Certificate of Merit accompanies the attached sixty-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 an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 6, 2022

  
\_\_\_\_\_  
Brian B. Flynn

**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 July 6, 2022, 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 CEO or President  
Healthy Truth LLC, individually and dba  
Organic Living Superfoods; Organic Living  
Superfoods, LLC, individually and dba Healthy Truth  
87 West St  
Walpole, MA 02081

Edmund L. Poli III  
(Registered Agent for Healthy Truth LLC, individually  
and dba Organic Living Superfoods)  
87 West St  
Walpole, MA 02081

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 6, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

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

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

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

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

July 6, 2022

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

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

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

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

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

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

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

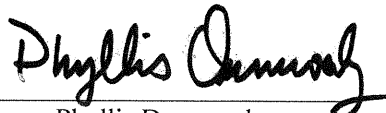
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

On July 6, 2022, 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 July 6, 2022, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody



July 6, 2022

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**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
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, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

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

District Attorney,  
Imperial County  
940 West Main Street,  
Ste 102  
El Centro, CA 92243

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey  
Boulevard  
Hanford, CA 93230

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

District Attorney, Los  
Angeles County  
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  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA  
92415

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

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

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste  
4500  
Fairfield, CA 94533

District Attorney,  
Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

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

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

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

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> 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](mailto: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.