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10 Attorneys for Defendant
11 Clif Bar & Company

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 ENVIRONMENTAL RESEARCH
15 CENTER, INC.,

16 Plaintiff,

17 v.

18 CLIF BAR & COMPANY; and DOES 1-
19 50, inclusive,

20 Defendants.
21

Case No. CGC-13-532935

~~PROPOSED~~ CONSENT JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court

NOV 21 2014

CLERK OF THE COURT

BY: ERICKA LARNAUTI
Deputy Clerk

1 **1. INTRODUCTION**

2 1.1 On July 18, 2013, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
4 Complaint for Injunctive Relief and Civil Penalties (“Complaint”) under to the provisions of
5 California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
6 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as “Proposition 65”),
7 against Defendant Clif Bar & Company (“Clif Bar”). ERC and Clif Bar are hereinafter
8 sometimes referred to individually as a “Party” or collectively as the “Parties”.

9 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
10 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
11 and toxic chemicals, facilitating a safe environment for consumers and employees, and
12 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling
13 this case in the public interest.

14 1.3 Clif Bar is a California corporation that, at all times relevant to this action, has
15 employed ten or more persons and is a “person in the course of doing business” within the
16 meaning of Proposition 65.

17 1.4 The Complaint is based on allegations contained in two Notices of Violations of
18 California Health & Safety Code Section 25249.5 *et seq.* (“Notices of Violations”), which were
19 dated November 23, 2010 and August 5, 2011, and served on the California Attorney General,
20 other public enforcers and Clif Bar. True and correct copies of the Notices of Violations are
21 attached hereto as **Exhibit A**. The following products were identified in the Notices of
22 Violations:

- 23 (1) Clif Bar & Company Peanut Butter 20 g Protein Builder’s (now known as
24 Clif Bar & Company Chocolate Peanut Butter 20g Protein Builder’s)
25 (2) Clif Bar & Company Vanilla Almond 20 g Protein Builder’s
26 (3) Clif Bar & Company Chocolate Mint 20 g Protein Builder’s
27 (4) Clif Bar & Company Cookies & Cream 20 g Protein Builder’s
28 (5) Clif Bar & Company Chocolate 20 g Protein Builder’s

1 (6) Clif Bar & Company LUNA Minis S'mores

2 (7) Clif Bar & Company Clif Shot Bloks Energy Chews Margarita Flavor

3 (8) Clif Bar & Company Clif Shot Bloks Electrolyte Chews Mountain Berry
4 Flavor

5 (These listed products are hereinafter referred to collectively as the "Covered Products" and in
6 the singular as a "Covered Product.") More than 60 days have passed since the Notices of
7 Violations were served and no public enforcement entity has filed a complaint against Clif Bar
8 with regard to the Covered Products or the alleged violations.

9 1.5 ERC's Notices of Violations and the Complaint allege Clif Bar has exposed and
10 continues to expose persons in California who use and/or handle the Covered Products to the
11 chemical lead in excess of the exposure levels allowed under Proposition 65 without Clif Bar
12 first providing clear and reasonable warnings, in violation of California Health and Safety Code
13 § 25249.6. Clif Bar denies all material allegations contained in the Notices of Violations and the
14 Complaint, asserts numerous affirmative defenses to the allegations of violations, and
15 specifically denies the Covered Products required a Proposition 65 warning or otherwise cause
16 harm to any person.

17 1.6 The Parties have entered into this Consent Judgment in order to settle,
18 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.

19 1.7 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,
20 shall constitute or be construed as an admission by any of the Parties of any fact, issue of law, or
21 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
22 construed as giving rise to any presumption or inference of admission or concession or waiver of
23 any defense by Clif Bar as to any fault, wrongdoing or liability, including without limitation, any
24 alleged violation of Proposition 65.

25 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall
26 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or
27 future legal proceeding unrelated to these proceedings. This paragraph shall not diminish or
28 otherwise affect the obligations, responsibilities, and duties of any Party with respect to this

1 Consent Judgment.

2 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent
3 Judgment is entered by the Court. The "Initial Compliance Date" shall be the same as the
4 Effective Date. The "Secondary Compliance Date" shall be June 30, 2015. The "Final
5 Compliance Date" shall be December 30, 2015.

6 1.10 The only products covered by this Consent Judgment are the Covered Products,
7 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
8 Covered Products only.

9 **2. JURISDICTION AND VENUE**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties as to
12 the acts alleged in the Notices of Violations and the Complaint, that venue is proper in this
13 Court, and that this Court has jurisdiction to enter this Consent Judgment pursuant to the terms
14 set forth herein.

15 **3. INJUNCTIVE RELIEF**

16 3.1 Clif Bar shall be permanently enjoined from manufacturing for sale in California,
17 "Distributing into California," or directly selling to any consumer located in California any of the
18 Covered Products, unless Clif Bar complies with the Compliance Schedule in Section 3.2 and
19 complies with the following Reformulation Standard:

20 3.1.1 For each of the Covered Products, the Reformulation Standard requires the
21 Covered Products to contain no more than 0.5 micrograms of lead per Serving, after subtracting
22 out the amount of lead deemed "naturally occurring" for each ingredient listed in Table 3.3.

23 3.1.2 For purposes of this Consent Judgment, "Distributing into California"
24 means to ship any of the Covered Products into California for sale in California or to sell or
25 provide any of the Covered Products to any person or entity Clif Bar knows intends to or will
26 ship any of the Covered Products into or sell any of the Covered Products in California.

27 3.1.3 For purposes of this Consent Judgment, "Serving" means 68 grams for the
28 Covered Products listed as (1) through (5) in Section 1.4, 20 grams for the Covered Product

1 listed as (6) in Section 1.4, and 30 grams for the Covered Products listed as (7) and (8) in Section
2 1.4. The weight of a Serving for each of the respective Covered Products as indicated in Section
3 3.1.3 will remain the same for the purposes of this Consent Judgment even if any of the weights
4 of single servings of any of the Covered Products as reflected on the Nutritional Facts Panels of
5 the Covered Products changes in the future.

6 3.2 Compliance Schedule

7 Clif Bar commits to reformulate the Covered Products to comply with the Reformulation
8 Standard in Section 3.1.1 above in accordance with the schedule below.

9 3.2.1 Clif Bar shall ensure that 87.5% of the Covered Products (i.e., 7 of the 8
10 identified Covered Products) manufactured on and after the Initial Compliance Date meet the
11 Reformulation Standard as calculated in Section 3.3.

12 3.2.2 Clif Bar shall ensure that 100% of the Covered Products manufactured on
13 and after the Secondary Compliance Date meet the Reformulation Standard. In the event that
14 Clif Bar cannot meet the Secondary Compliance Date for 100% of the Covered Products, Clif
15 Bar shall pay ERC and additional \$500.00 in Alternate Payments within ten (10) days of the
16 Secondary Compliance Date, and shall be obligated to ensure that 100% of the Covered Products
17 manufactured on and after the Final Compliance Date meet the Reformulation Standard.

18 3.3 Calculation of Lead Content

19 For purposes of Section 3.1 above and this Consent Judgment only, lead exposure levels
20 shall be measured in micrograms, and shall be calculated using the following formula:

- 21 • Micrograms of lead per Serving means micrograms of lead per gram of product
22 multiplied by grams of product per Serving, but excluding any amounts of lead
23 deemed “naturally occurring” as set forth below.
- 24 • For Purposes of Section 3.1 above and for purposes of this Consent Judgment
25 only, the amount of lead content deemed “naturally occurring” in each of the
26 Covered Products is the sum of the amounts of “naturally occurring” lead from
27 each ingredient listed in Table 3.3 that is present in a Serving of the Covered
28 Products.

- For each ingredient listed in Table 3.3, the amount of lead deemed “naturally occurring” for the purposes of this Consent Judgment only is listed in Table 3.3 in micrograms of “naturally occurring” lead per gram of the ingredient contained in each of the Covered Products.
- Applicable exemptions shall be calculated by multiplying the exemption concentrations referenced above by the number of grams of the ingredient subject to the exemption within a Serving of the product, and subtracting all exemption amounts from the calculated total lead, in micrograms, in a Serving of the Covered Product. The maximum amount of lead that can be exempt in a Serving pursuant to this section is 2.0 micrograms.
- If Clif Bar seeks to exclude “naturally occurring” amounts of lead under this Section 3.3 for any of the Covered Products, Clif Bar shall provide to ERC, under the terms of the confidentiality agreement entered into by the Parties, and to the Attorney General upon request and subject to Evidence Code Section 1040, a separate document to include a complete list of all ingredients listed in Table 3.3 in each such Covered Product and the quantity in grams (rounded to the nearest one tenth of a gram) of each of those ingredients in a Serving of the Covered Products.

TABLE 3.3

Ingredient	Amount of Lead Per Gram of Ingredient Deemed Naturally Occurring for Purposes of this Consent Judgment Only
Calcium (elemental)	0.8 micrograms per gram ($\mu\text{g/g}$)
Ferrous fumarate	0.4 $\mu\text{g/g}$
Zinc oxide	8.0 $\mu\text{g/g}$
Magnesium oxide	0.4 $\mu\text{g/g}$
Magnesium carbonate	0.332 $\mu\text{g/g}$
Magnesium hydroxide	0.4 $\mu\text{g/g}$
Zinc gluconate	0.8 $\mu\text{g/g}$
Potassium chloride	1.1 $\mu\text{g/g}$
Cocoa powder	1.0 $\mu\text{g/g}$
Chocolate liquor	1.0 $\mu\text{g/g}$
Cocoa butter	0.1 $\mu\text{g/g}$

1 **3.4 Testing**

2 3.4.1 Beginning on the Effective Date and continuing for a period of three (3)
3 years thereafter, at least once every six (6) months, Clif Bar shall have three (3) randomly
4 selected samples (in the form intended for sale to the end-user) from a single lot of each Covered
5 Product subject to the Reformulation Requirement tested for lead content. The term “lot,” as
6 used herein, means a manufacturing cycle or series of manufacturing cycles producing Covered
7 Products that are designed with the same date code.

8 Each lot shall be designated by a numbers, letters, or a combination of numbers and
9 letters unique to that lot, and which shall be affixed or printed on each wrapper or container of
10 any of the Covered Products in that lot. Each sample to be tested shall be randomly selected
11 using a sound statistical sampling plan, and shall be identified in Clif Bar’s request to the
12 laboratory for testing as being submitted pursuant to this Consent Judgment. For each Covered
13 Product, the highest lead content test result of the three (3) randomly selected and tested samples
14 shall be used for calculating the lead exposure level for that Covered Product as set forth in
15 Section 3.3 above, unless all three results are the same, in which case, the single lead content test
16 result shall be used for calculating the lead exposure level for that Covered Product as set forth in
17 Section 3.3 above. Should the highest lead content test of the three samples exceed the allowable
18 limit, Clif Bar may analyze two separate samples from that same bar. Should the tests of those
19 two samples both reflect an allowable lead exposure level, the initial lead content test may be
20 disregarded.

21 3.4.2 Testing for lead content under Section 3.4 shall be performed using
22 closed-vessel, microwave-assisted acid digestion employing high-purity reagents, followed by
23 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of quantification of
24 less than or equal to 0.010 mg/kg; or heat-assisted acid digestion employing high-purity reagents,
25 followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving a limit of
26 quantification of less than or equal to 0.010 mg/kg; or any other testing method agreed upon in
27 writing by the Parties.

28 3.4.3 Testing for lead content under Section 3.4 shall be performed by an

1 independent third-party laboratory certified by the California Environmental Laboratory
2 Accreditation Program for the analysis of heavy metals or an independent third-party laboratory
3 registered with the United States Food & Drug Administration. Clif Bar shall also retain all test
4 results and documentation for a period of five years from the date of the test.

5 3.4.4 Clif Bar agrees to deliver all laboratory reports with results of testing for
6 lead content under Section 3.4 to ERC within ten (10) working days after receipt of ERC's
7 written request to the persons for Clif Bar identified in Section 17. These reports shall be
8 deemed and treated by ERC as confidential information under the terms of the confidentiality
9 agreement entered into by the Parties. Except as otherwise permitted by California law, ERC
10 agrees that it will no longer have the right to request or receive any testing reports from Clif Bar
11 related to this Consent Judgment following the fourth anniversary of the Effective Date.

12 3.4.5 Nothing in this Consent Judgment shall limit Clif Bar's ability to conduct,
13 or require that others conduct, additional testing of the Covered Products, including the raw
14 materials used in their manufacture.

15 3.4.6 The testing and sampling methodology set forth in Section 3.4 is a result
16 of negotiation and compromise, and is accepted by the Parties for the purposes of settling,
17 compromising, and resolving the issues in this action, including future compliance with Section
18 3 of this Consent Judgment, and shall not be used for any purpose or in any other matter, except
19 for the purposes of determining future compliance with this Consent Judgment.

20 **3.5 Products in the Stream of Commerce**

21 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products
22 that Clif Bar manufactured on or before the Effective Date, or otherwise applicable Compliance
23 Date. On or before the applicable compliance date (Initial Compliance Date, Secondary
24 Compliance Date, Final Compliance Date), Clif Bar shall provide ERC with the last lot number
25 and expiration date for each of the Covered Products manufactured as of that date, as necessary
26 for ERC to verify compliance.

27 ///

28 ///

1 **4. SETTLEMENT PAYMENT**

2 **4.1 Total Payment**

3 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
4 ERC's expenses and costs of litigation, and ERC's attorneys' fees, Clif Bar shall, within 10
5 business days after the Effective Date, remit by wire transfer the amount of \$299,500.00 ("Total
6 Settlement Amount"), to ERC's Escrow Account. ERC will give Clif Bar the account
7 information necessary to make the wire transfer. Clif Bar shall issue a single IRS Federal Tax
8 Form 1099 for the above payment to ERC. Sections 4.2-4.5 below describe the agreed partition
9 of the Total Settlement Amount.

10 **4.2 Civil Penalty**

11 As a portion of the Total Settlement Amount, \$98,493.00 shall be considered a civil
12 penalty pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75%
13 (\$73,869.75) of the civil penalties to the Office of Environmental Health Hazard Assessment
14 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
15 with California Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be
16 sent to Defendant's counsel. ERC will retain the remaining 25% (\$24,623.25) of the civil
17 penalty.

18 **4.3 Payment in Lieu of Further Civil Penalties**

19 As a portion of the Total Settlement Amount, \$98,492.32 shall be considered a payment
20 to ERC in lieu of further civil penalties for activities such as (1) funding the investigating,
21 researching and testing of consumer products that may contain Proposition 65 listed chemicals;
22 (2) funding post-settlement monitoring of past consent judgments; and (3) funding the continued
23 day to day business of enforcement of Proposition 65 matters which address contaminated
24 ingestible products, similar to the subject matter of this action.

25 **4.4 Reimbursement of Expenses and Costs**

26 As a portion of the Total Settlement Amount, \$40,377.18 shall be considered a
27 reimbursement to ERC for its reasonable costs associated with the enforcement of Proposition 65
28 and other expenses and costs incurred as a result of investigating, bringing this matter to Clif

1 Bar's attention, litigating and negotiating a settlement in the public interest.

2 **4.5 Attorney Fees**

3 As a portion of the Total Settlement Amount, \$62,137.50 shall be considered a payment
4 to ERC for its attorneys' fees of Philip T. Emmons (\$60,150.00) and Karen A. Evans
5 (\$1,987.50).

6 **5. COSTS AND FEES**

7 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
8 fees, costs and expenses in this action.

9 **6. RELEASE**

10 6.1 ERC, acting on its own behalf and in the public interest, releases Clif Bar and its
11 parent companies, subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees,
12 successors, assigns, insurers, suppliers, manufacturers, distributors, wholesalers, retailers and all
13 other entities in the distribution chain of the Covered Products, and each of their officers,
14 directors, shareholders, employees, agents, representatives, and attorneys, from all claims for
15 violations of Proposition 65 up through the Effective Date based on exposure to lead from the
16 Covered Products as set forth in the Notices of Violations and the Complaint.

17 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
18 Proposition 65 with respect to consumer exposures to lead from the Covered Products as set
19 forth in the Notices of Violations and the Complaint.

20 6.3 ERC on behalf of itself only, on the one hand, and Clif Bar, on the other hand,
21 release and waive all claims they may have against each other and their respective officers,
22 directors, shareholders, employees, agents, representatives and attorneys for any statements or
23 actions made or undertaken by them or by their respective officers, directors, shareholders,
24 employees, agents, representatives or attorneys in connection with the Notices of Violations or
25 this action.

26 6.4 Nothing in this release is intended to apply to any occupational or environmental
27 exposures arising under Proposition 65, nor shall this release apply to any of Clif Bar's products
28 other than the Covered Products.

1 **7. MOTION FOR COURT APPROVAL**

2 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
3 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
4 Code of Regulations § 3000, *et seq.* This motion shall be served upon Clif Bar and upon the
5 California Attorney General's Office. Clif Bar and ERC shall use their best efforts to support
6 entry of this Consent Judgment in the form submitted to the Court for approval.

7 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
8 California Attorney General objects in writing to any term in this Consent Judgment or files an
9 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
10 manner prior to the hearing on the motion.

11 7.3 This Consent Judgment shall be effective only after it has been entered by the
12 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
13 any purpose.

14 **8. RETENTION OF JURISDICTION**

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

17 **9. MODIFICATION OF CONSENT JUDGMENT**

18 This Consent Judgment after its entry by the Court may be modified only upon written
19 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.
20 In the event of an agreed upon modification requested by Clif Bar, Clif Bar shall reimburse ERC
21 its reasonable attorneys' fees and costs associated with a joint motion or application to the Court
22 in support of the agreed upon modification of the Consent Judgment.

23 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
24 **RESOLVE DISPUTES**

25 In the event a dispute arises with respect to any Party's compliance with the terms and/or
26 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance of
27 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
28 Party in person, by telephone or by written communication before seeking relief from the Court.

1 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in
2 this Court pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law.
3 The prevailing party in any such dispute brought to this Court for resolution shall be awarded all
4 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing
5 party" means a party who is successful in obtaining relief more favorable to it than the relief the
6 other party was agreeable to providing during the Parties' good faith attempt to resolve the
7 dispute that is the subject of such an enforcement proceeding.

8 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

9 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
10 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable
11 provisions shall not be adversely affected.

12 **12. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and apply within the State of California.

15 **13. RELATION TO OTHER ACTIONS**

16 This Consent Judgment shall have no application or effect on Clif Bar for sales of the
17 Covered Products to consumers located outside the State of California.

18 **14. DRAFTING**

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

27 **15. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and understanding of the

1 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all
2 prior agreements or understandings, written or oral, with regard to the matters set forth herein.
3 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall
4 be deemed to exist or to bind any of the Parties.

5 **16. EXECUTION IN COUNTERPARTS**

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

9 **17. NOTICES**

10 All notices required by this Consent Judgment to be given to any Party shall be sent by
11 first-class registered or certified mail, or overnight delivery, to all of the following:

12 **FOR ERC:**

13 Chris Heptinstall, Executive Director
14 Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
16 San Diego, CA 92108

17 Philip T. Emmons
18 Law Office of Philip T. Emmons
19 1990 North California Blvd., 8th Floor
20 Walnut Creek, CA 94596-3742

21 Karen A. Evans
22 Law Office of Karen A. Evans
23 4218 Biona Place
24 San Diego, CA 92116

25 **FOR CLIF BAR:**

26 Bruce Lymburn
27 General Counsel
28 Clif Bar & Company
1451 66th Street
Emeryville, CA 94608

With a copy to:
William F. Tarantino
Morrison & Foerster LLP
425 Market Street, Suite 3300
San Francisco, CA 94105

1 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

2 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is
3 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment
4 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,
5 and to legally bind that Party to this Consent Judgment. Each person signing this Consent
6 Judgment on behalf of a Party represents and warrants that he or she has read and understands
7 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
8 behalf of that Party.

9 **IT IS SO STIPULATED:**

10 Dated: 11/13/2014

ENVIRONMENTAL RESEARCH CENTER

11
12 By: 

Chris Hepinstall
Executive Director

13
14 Dated: 11/18/2014

CLIF BAR & COMPANY

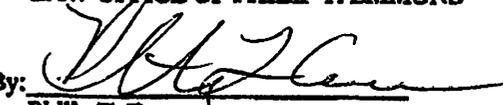
15
16 By: 

Amy Norris
Chief Legal Counsel

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18 **APPROVED AS TO FORM:**

19 Dated: 11/19/14

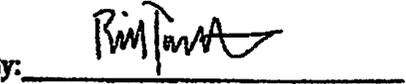
LAW OFFICE OF PHILIP T. EMMONS

20
21 By: 

Philip T. Emmons
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

22
23
24 Dated: 11/18/2014

MORRISON & FOERSTER LLP

25
26 By: 

William F. Tarantino
Attorneys for Defendant
CLIF BAR & COMPANY

ORDER AND JUDGMENT

1 Based on the Parties' stipulation, and good cause appearing therefor, this Consent
2 Judgment is approved and judgment is hereby entered according to its terms.
3 IT IS SO ORDERED, ADJUDGED AND DECREED.
4

5 Dated: NOV 21 2014

JOHN K. STEWART

Judge of the Superior Court

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EXHIBIT A

LAW OFFICE OF
PHILIP T. EMMONS
208 Normandy Lane
Walnut Creek, CA 94598
Tel: (925) 349-4029
E-Mail: p-emmons@hotmail.com

November 23, 2010

VIA CERTIFIED MAIL

Current CEO or President
Clif Bar & Company
1610 5th Street
Berkeley, CA 94710

Bruce Lymburn
(Clif Bar & Company's Registered Agent
for Service of Process)
1610 5th Street
Berkeley, CA 94710

Current CEO or President
Clif Bar & Company
1451 66th Street
Emeryville, CA 94608

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

VIA PRIORITY MAIL

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

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

Dear Addressees:

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

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

The name of the Company covered by this notice that violated Proposition 65 (hereinafter "the Violators") is:

Clif Bar & Company

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

Clif Bar & Company Peanut Butter 20 g Protein Builder's 2.4 oz - Lead
Clif Bar & Company Vanilla Almond 20 g Protein Builder's 2.4 oz - Lead
Clif Bar & Company Chocolate Mint 20g Protein Builder's 2.4 oz - Lead

EXHIBIT A

Clif Bar & Company Chocolate 20 g Protein Builder's 2.4 oz - Lead
Clif Bar & Company Cookies & Cream 20 g Protein Builder's 2.4 oz - 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 as chemical known to cause cancer.

This letter is a notice to each of 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 each of the Violators.

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemicals.

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 each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation. ERC's address 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309-4194. However, ERC has retained me in connection with this matter, and all communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Philip T. Emmons, Esq.

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Clif Bar & Company, and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Clif Bar & Company

I, Philip T. Emmons, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: November 23, 2010

Philip T. Emmons

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On November 23, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President
Clif Bar & Company
1610 5th Street
Berkeley, CA 94710

Current CEO or President
Clif Bar & Company
1451 66th Street
Emeryville, CA 94608

Bruce Lymburn
(Clif Bar & Company's Registered Agent
for Service of Process)
1610 5th Street
Berkeley, CA 94710

On November 23, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On November 23, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on November 23, 2010, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

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

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

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

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

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

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

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

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

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

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

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

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

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

District Attorney, Marin County
3501 Civic Center, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
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Mariposa, CA 95338

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

District Attorney, Merced County
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Merced, CA 95340

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

District Attorney, Mono County
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Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney, Orange County
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Santa Ana, CA 92701

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

November 23, 2010

Page 6

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District Attorney, San Bernardino County
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San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
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District Attorney, San Luis Obispo County
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San Luis Obispo, CA 93408

District Attorney, San Mateo County
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District Attorney, Santa Barbara County
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District Attorney, Santa Clara County
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District Attorney, Santa Cruz County
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Santa Cruz, CA 95060

District Attorney, Shasta County
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Redding, CA 96001-1632

District Attorney, Sierra County
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Downieville, CA 95936

District Attorney, Siskiyou County
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District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
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Red Bluff, CA 96080

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

District Attorney, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

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

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

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

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

LAW OFFICE OF
PHILIP T. EMMONS
208 Normandy Lane
Walnut Creek, CA 94598
Tel: (925) 349-4029
E-Mail: p-emmons@hotmail.com

August 5, 2011

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309- 4194. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

Clif Bar & Company

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

Clif Bar & Company LUNA Minis S'mores – Lead

Clif Bar & Company Clif Shot Bloks Energy Chews Margarita Flavor – Lead

Clif Bar & Company Clif Shot Bloks Electrolyte Chews Mountain Berry Flavor –Lead

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

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 5, 2008, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Philip T. Emmons, Esq.

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Clif Bar & Company, and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: The Environmental Research Center's Notice of Proposition 65 Violations by Clif Bar & Company

I, Philip T. Emmons, declare:

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

2. I am an attorney for the noticing party.

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

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

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



Dated: August 5, 2011

Philip T. Emmons

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On August 5, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President
Clif Bar & Company
1610 5th Street
Berkeley, CA 94710

Current CEO or President
Clif Bar & Company
1451 66th Street
Emeryville, CA 94608

Bruce Lymburn
(Clif Bar & Company's Registered Agent
for Service of Process)
1610 5th Street
Berkeley, CA 94710

On August 5, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 5, 2011
Page 5

On August 5, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on August 5, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

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

August 5, 2011

Page 6

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

August 5, 2011

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City Hall, Room 234
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San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into 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 enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.