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ENVIRONMENTAL RESEARCH CENTER

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Attorneys for Defendant
BIOPHARMA SCIENTIFIC, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ENVIRONMENTAL RESEARCH CENTER, a California non-profit corporation,

Plaintiff,

v.

BIOPHARMA SCIENTIFIC, LLC and DOES 1-100

Defendants.

CASE NO. CGC-14-539327

STIPULATED CONSENT JUDGMENT; ~~[PROPOSED] ORDER~~

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 15, 2014
Trial Date: None set

1. INTRODUCTION

1.1 On May 15, 2014, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against BioPharma Scientific, LLC and Does 1-100 (collectively

"BioPharma"). In this action, ERC alleges that a number of products manufactured, distributed or sold by BioPharma contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered Product" or collectively as "Covered Products") are: (1) BioPharma Scientific LLC Nanolean Weight Management Natural Berry, (2) BioPharma Scientific LLC Nanomeal All-In-One Meal Tropical Fruit Blend, (3) BioPharma Scientific LLC Nanoreds10 Fruit & Vegetable Superfood with Resveratrol Natural Berry, (4) BioPharma Scientific LLC Nanogreens10 Vegetable & Fruit Superfood Natural Green Apple, and (5) BioPharma Scientific LLC Nanomega3 Heart, Brain & Vision Superfood Pineapple Orange.

1.2 ERC and BioPharma are hereinafter referred to individually as a "Party" or collectively as the "Parties."

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

1.4 For purposes of this Consent Judgment, the Parties agree that BioPharma is a business entity that has employed ten or more persons at some relevant time period to this action, and qualified as a "person in the course of business" at some relevant time period to this action within the meaning of Proposition 65. BioPharma manufactures, distributes and sells the Covered Products.

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated May 17, 2013, served on the California Attorney General, other public enforcers, and BioPharma ("Notice"). A true and correct copy of the Notice is attached as Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the Notice was mailed and uploaded to the Attorney General's website, and no designated governmental entity has filed a complaint against BioPharma with regard to the Covered Products or the alleged violations.

1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes persons in California to lead without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. BioPharma denies all material allegations contained in the Notice and Complaint, and specifically denies that the Covered Products required a Proposition 65 warning or otherwise caused harm to any person. BioPharma asserts that it conducted testing showing compliance with Proposition 65, and any detectible levels of lead in the Covered Products are the result of naturally occurring lead levels, as provided for in California Code of Regulations, Title 27, Section 25501(a).

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

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

1.9 The Effective Date of this Consent Judgment is the date on which it is entered as a Judgment by this Court. The Compliance Date at which Biopharma must bring its products into compliance with Proposition 65 shall be 60 days from the Effective Date.

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment only and any further court action that may become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction

over BioPharma as to the acts alleged in the Complaint, that venue is proper in San Francisco County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through and including the Effective Date which were or could have been asserted in this action based on the facts alleged in the Notice and Complaint.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning on the Compliance Date, in the event BioPharma employs ten or more employees and qualifies as a "person in the course of doing business" pursuant to Proposition 65, it shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California", or directly selling in the State of California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day when the maximum suggested dose is taken as directed on the Covered Product's label, unless it meets the warning requirements under Section 3.2. This provision does not require BioPharma to take any action with regard to products that were manufactured or distributed by BioPharma before the Compliance Date.

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California that BioPharma knows is for sale in California or to sell a Covered Product to a distributor that BioPharma knows will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day.

3.2 Clear and Reasonable Warnings

If BioPharma is required to provide a warning pursuant to Section 3.1, the following warning must be utilized:

[California Proposition 65] **WARNING: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.**

BioPharma shall use the phrase "cancer and" in the warning only if the maximum daily dose recommended on the label contains more than 15 micrograms of lead. The words "California Proposition 65" may be included at BioPharma's option.

The warning shall be securely affixed to or printed upon the container or label of each Covered Product. The warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the label or container of BioPharma's product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No other statements about Proposition 65 or lead may accompany the warning.

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

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees, and costs, BioPharma shall make a total payment of $65,000.00 ("Total Settlement Amount") to ERC. The Total Settlement Amount shall be paid to ERC via four consecutive monthly payments. The first monthly payment of $16,250.00 shall be due and owing within five days of the Effective Date. The second monthly payment of $16,250.00 shall be due and owing within 35 days of the Effective Date. The third monthly payment of $16,250.00 shall be due and owing within 65 days of the Effective Date. The fourth and final monthly payment of $16,250.00 shall be due and owing within 95 days of the Effective Date Date. BioPharma shall make these payments by wire transfer to ERC's escrow account, for which ERC will give BioPharma the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 $16,940.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% ($12,705.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% ($4,235.00) of the civil penalty.

4.3 $1,993.60 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $12,778.59 shall be distributed to ERC in lieu of further civil penalties, for the day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject matter of the current action; (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a donation of $639.00 to the Global Community Monitorto address reducing toxic chemical exposures in California.

4.5 $2,925.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney's fees, $16,110.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's attorney's fees, while $14,252.81 shall be distributed to ERC for its in-house legal fees.

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified only (i) by written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent judgment.

5.2 If BioPharma seeks to modify this Consent Judgment under Section 5.1, then BioPharma must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must provide written notice to BioPharma within thirty days of receiving the Notice of Intent. If ERC notifies BioPharma in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in

person or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC shall provide to BioPharma a written basis for its position. The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

5.3 In the event that BioPharma initiates or otherwise requests a modification under Section 5.1, and the meet and confer process leads to a joint motion or application of the Consent Judgment, BioPharma shall reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process and filing and arguing the motion or application.

5.4 Where the meet-and-confer process does not lead to a joint motion or application in support of a modification of the Consent Judgment, then either Party may seek judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of the modification.

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this Consent Judgment. If at any time ERC alleges that a Covered Product exceeds the 0.5 µg/day threshold for lead exposure, and that no Proposition 65 warning has been provided, then ERC shall inform BioPharma in a reasonably prompt manner of its test results, including information sufficient to permit BioPharma to identify the Covered Products at issue. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action. In addition, prior to seeking to enforce this Consent Judgment or bringing any independent or separate legal actions based on alleged violation of Proposition 65 caused by the Covered Products, ERC shall provide forty five (45) days' written notice to BioPharma. The notice shall

identify any and all alleged violations, including ERC's test results and information sufficient to permit BioPharma to identify the products at issue, and BioPharma shall have the right to cure the same within the foregoing forty five-day period by applying warnings as set forth in Section 3.2, reformulating, or ceasing sales in California of the product units alleged to be in violation, which shall be deemed to constitute compliance with this Consent Judgment. This notice and opportunity to cure period may not be invoked more than once regarding any specific Covered Product.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment may apply to, be binding upon, and benefit the Parties and their respective officers, directors, members, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to Covered Products which are distributed or sold outside the State of California and which are not used by California consumers.

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and BioPharma, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead from the handling, use, or consumption of the Covered Products and fully resolves all claims that have been or could have been asserted in this action up to and including the Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC, on behalf of itself and in the public interest, hereby releases and discharges BioPharma and its respective officers, directors, members, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label customers of BioPharma), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,

fees, costs and expenses asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead.

8.2 ERC on its own behalf only, on one hand, and BioPharma on its own behalf only, on the other, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice or Complaint up through and including the Effective Date provided however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

8.3 It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice or the Complaint and relating to the Covered Products will develop or be discovered. ERC on behalf of itself only, on one hand, and BioPharma, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefore. ERC and BioPharma acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

ERC on behalf of itself only, on the one hand, and BioPharma, on the other hand, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

8.4 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in the Covered Products as set forth in the Notice and the Complaint.

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

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

FOR ENVIRONMENTAL RESEARCH CENTER:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

With a copy to:
Michael Freund
Ryan Hoffman
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543
rrhoffma@gmail.com

BIOPHARMA SCIENTIFIC, LLC

Nicole Hugley, Director of Operations, BioPharma Scientific, LLC
2575 Pioneer Ave. #108
Vista, CA 92081

With a copy to:
David A. Peck, Esq.
Ross M. Campbell, Esq.
Coast Law Group, LLP
1140 South Coast Highway 101

Encinitas, CA 92024
Telephone: (760) 942-8505
Email: Ross@CoastLawGroup.com

12. COURT APPROVAL

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

12.2 If the California Attorney General objects to any term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

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

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party.

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand, and the notice and cure provisions set forth in Section 6 shall apply. In the event an action or motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence,

the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

16. ENTIRE AGREEMENT, AUTHORIZATION

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

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

17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

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

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

IT IS SO STIPULATED:

Dated: 7/23/, 2015

ENVIRONMENTAL RESEARCH CENTER

By: _____
Chris Heptinstall, Executive Director

Dated: 7/22, 2015

BIOPHARMA SCIENTIFIC, LLC

By:
Its:

APPROVED AS TO FORM:

Dated: 7/24, 2015

MICHAEL FREUND & ASSOCIATES

By:
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental Research Center

Dated: 7/21, 2015

COAST LAW GROUP, LLP

By:
David A. Peck, Esq.
Ross M. Campbell, Esq.
Attorneys for Defendant BioPharma Scientific, LLC

~~ORDER AND~~ JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: NOV 16 2015, 2015

Judge of the Superior Court

ERNEST H. GOLDSMITH

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

May 17, 2013

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

To Go Brands, Inc.
Brands To Go Inc.
BioPharma Scientific LLC
Medpodium Health Products, Inc.
Cardium Therapeutics, Inc.

Exhibit A

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

- **To Go Brands Inc. Greens To Go Delicious Apple Melon Flavor – Lead**
- **BioPharma Scientific LLC Nanolean Weight Management Natural Berry – Lead**
- **BioPharma Scientific LLC Nanomeal All-In-One Meal Tropical Fruit Blend – Lead**
- **BioPharma Scientific LLC Nanoreds10 Fruit & Vegetable Superfood with Resveratrol Natural Berry – Lead**
- **BioPharma Scientific LLC Nanogreens10 Vegetable & Fruit Superfood Natural Green Apple – Lead**
- **BioPharma Scientific LLC Nanomega3 Heart, Brain & Vision Superfood Pineapple Orange – Lead**
- **To Go Brands Inc. Smoothie Complete Vanilla Berry – 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.

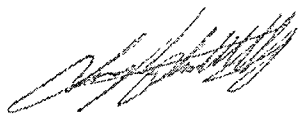
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred 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 May 17, 2010, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons 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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; 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.

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

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to To Go Brands, Inc.; Brands To Go Inc.; BioPharma Scientific LLC; Medpodium Health Products, Inc.; Cardium Therapeutics, Inc.; 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's Notice of Proposition 65 Violations by To Go Brands, Inc.; Brands To Go Inc.; BioPharma Scientific LLC; Medpodium Health Products, Inc.; and Cardium Therapeutics, Inc.

I, Chris Heptinstall, declare:

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

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

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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, 2013

Chris Heptinstall

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 17, 2013, 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 with the postage fully prepaid for delivery by Certified Mail:

President or CEO
To Go Brands, Inc.
9010 Venamar Drive, Suite 101
San Diego, CA 92121

President or CEO
Brands To Go Inc.
9010 Kenamar Drive, Suite 101
San Diego, CA 92121

President or CEO
To Go Brands, Inc.
8505 Commerce Avenue
San Diego, CA 92121

Deren Howe
(Registered Agent of To Go Brands, Inc.)
9010 Venamar Drive, Suite 101
San Diego, CA 92121

Deren Howe
(Registered Agent of To Go Brands, Inc.)
9010 Kenamar Drive, Suite 101
San Diego, CA 92121

Richard Thornton
(Registered Agent of BioPharma Scientific LLC)
5740 Fleet Street #200
Carlsbad, CA 92008

President or CEO
BioPharma Scientific
5740 Fleet Street #200
Carlsbad, CA 92008

President or CEO
Cardium Therapeutics, Inc.
3611 Valley Centre Drive, Suite 525
San Diego, CA 92130

President or CEO
Medpodium Health Products, Inc.
12255 El Camino Real , Suite 250
San Diego, CA 92130

President or CEO
Cardium Therapeutics, Inc.
12255 El Camino Real, Suite 250
San Diego, CA 92130

On May 17, 2013, I electronically 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 party by uploading a true and correct copy thereof 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, 2013, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on May 17, 2013, in Fort Oglethorpe, Georgia.

Rebecca Turner-Smith

Service List

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

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

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

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

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

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

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

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

District Attorney, El Dorado County
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Placerville, CA 95667

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Fresno, CA 93721

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Post Office Box 430
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District Attorney, Imperial County
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District Attorney, Inyo County
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1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
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Hanford, CA 93230

District Attorney, Lake County
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Lakeport, CA 95453

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Los Angeles, CA 90012

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San Rafael, CA 94903

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