



FILED
ALAMEDA COUNTY

MAY 09 2019

CLERK OF THE SUPERIOR COURT

By  Deputy

1 Michael Freund SBN 99687
2 Michael Freund & Associates
3 1919 Addison Street, Suite 105
4 Berkeley, CA 94704
5 Telephone: (510) 540-1992
6 Facsimile: (510) 540-5543

7 Attorneys for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 Matthew Kaplan SBN 177242
10 Ronie M. Schmelz SBN 130798
11 Tucker Ellis LLP
12 515 S Flower Street, Fl. 42
13 Los Angeles, CA 90071
14 Telephone: (213) 430-3400
15 Facsimile: (213) 430-3409

16 Attorney for Defendant
17 GOOD SUPERFOODS LLC

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF ALAMEDA

20 ENVIRONMENTAL RESEARCH
21 CENTER, INC., a California non-profit
22 corporation

23 Plaintiff,

24 vs.

25 GOOD SUPERFOODS LLC and DOES 1-
26 100

27 Defendants.

CASE NO. RG18896834

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 14, 2018

Trial Date: None set

28 1. INTRODUCTION

1.1 On March 14, 2018, Plaintiff Environmental Research Center, Inc. ("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.*

1 (“Proposition 65”), against Good Superfoods LLC (“Good Superfoods”) and Does 1-100.
2 Subsequently, on January 8, 2019, a First Amended Complaint was filed (the operative
3 Complaint, referred to as the “Amended Complaint”). In this action, ERC alleges that a number
4 of products manufactured, distributed, or sold by Good Superfoods contain lead and/or cadmium,
5 chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and expose
6 consumers to these chemicals at a level requiring a Proposition 65 warning. These products
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
8 Products”) and the specific chemicals they are alleged to contain are: (1) Superfood Athlete.com
9 Nutrient Bar Energy Peanut Butter (lead), (2) Superfood Athlete.com Nutrient Bar Energy Triple
10 Cacao (lead, cadmium), (3) Superfood Chocolate Mandarin Orange Sculpt (lead, cadmium), (4)
11 Superfood Chocolate Cocoa Mocha Coffeeberry (lead, cadmium), and (5) Superfood Chocolate
12 Amazon Berry NutriHeart (lead, cadmium).

13 **1.2** ERC and Good Superfoods are hereinafter referred to individually as a “Party”
14 or collectively as the “Parties.”

15 **1.3** ERC is a 501(c)(3) California non-profit corporation dedicated to, among other
16 causes, helping safeguard the public from health hazards by reducing the use and misuse of
17 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
18 and encouraging corporate responsibility.

19 **1.4** For purposes of this Consent Judgment only, the Parties agree that Good
20 Superfoods is a business entity that has employed ten or more persons at times relevant to this
21 action, and qualifies as a “person in the course of doing business” within the meaning of
22 Proposition 65. Good Superfoods manufactured, distributed, and/or sold the Covered Products.

23 **1.5** The Amended Complaint is based on allegations contained in ERC’s Notices of
24 Violation dated January 2, 2018 and August 27, 2018 that were served on the California
25 Attorney General, other public enforcers, and Good Superfoods (“Notices”). True and correct
26 copies of the Notices dated January 2, 2018 and August 27, 2018 are attached hereto as
27 **Exhibits A and B**, respectively, and incorporated herein by reference. More than 60 days have
28 passed since the Notices were served on the Attorney General, public enforcers, and Good

1 Superfoods and no designated governmental entity has filed a Complaint against Good
2 Superfoods with regard to the Covered Products or the alleged violations.

3 **1.6** ERC's Notices and Amended Complaint allege that use of the Covered Products
4 exposes persons in California to lead and/or cadmium without first providing clear and
5 reasonable warnings in violation of California Health and Safety Code section 25249.6. Good
6 Superfoods denies all material allegations contained in the Notices and Amended Complaint.

7 **1.7** The Parties have entered into this Consent Judgment in order to settle,
8 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
9 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
10 be construed as an admission by any of the Parties or by any of their respective officers,
11 directors, shareholders, members, employees, agents, parent companies, subsidiaries, divisions,
12 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
13 issue of law, or violation of law.

14 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
15 prejudice, waive, or impair any right, remedy, argument, or defense any of the Parties may have
16 in any current or future legal proceeding unrelated to these proceedings.

17 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
18 a Judgment by this Court.

19 **2. JURISDICTION AND VENUE**

20 For purposes of this Consent Judgment and any further court action that may become
21 necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has subject
22 matter jurisdiction over the allegations contained in the Amended Complaint, personal jurisdiction
23 over the Parties as to the acts alleged in the Amended Complaint, that venue is proper in Alameda
24 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
25 resolution of all claims up through and including the Effective Date which were or could have
26 been asserted in this action based on the facts alleged in the Notices and/or Amended Complaint.

27 ///

28 ///

1 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

2 **3.1** Beginning on the Effective Date, Good Superfoods shall be permanently
3 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
4 California," or directly selling in the State of California, any Covered Products which exposes a
5 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
6 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
7 meets the warning requirements under Section 3.2.

8 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
9 of California" shall mean to directly ship a Covered Product into California for sale in
10 California or to sell a Covered Product to a distributor that Good Superfoods knows or should
11 know will sell the Covered Product in California.

12 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
13 Level" shall be measured in micrograms, and shall be calculated using the following formula:
14 micrograms of lead per gram of product, multiplied by grams of product per serving of the
15 product (using the largest serving size appearing on the product label), multiplied by servings
16 of the product per day (using the largest number of recommended daily servings appearing on
17 the label), which equals micrograms of lead exposure per day. If the label contains no
18 recommended daily servings, then the number of recommended daily servings shall be one.

19 **3.1.3** For purposes of this Consent Judgment, the "Daily Cadmium Exposure
20 Level" shall be measured in micrograms, and shall be calculated using the following formula:
21 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
22 product (using the largest serving size appearing on the product label), multiplied by servings
23 of the product per day (using the largest number of recommended daily servings appearing on
24 the label), which equals micrograms of cadmium exposure per day. If the label contains no
25 recommended daily servings, then the number of recommended daily servings shall be one.

26 **3.2 Clear and Reasonable Warnings**


27 If Good Superfoods is required to provide a warning pursuant to Section 3.1, one of the
28 following warnings must be utilized ("Warning"):

1 **OPTION 1**

2 **WARNING:** Consuming this product can expose you to chemicals including [lead] [or]
3 [cadmium] which is [are] known to the State of California to cause [cancer and] birth
4 defects or other reproductive harm. For more information go to
5 www.P65Warnings.ca.gov/food.

6 For Option 1, Good Superfoods shall use the phrase “cancer and” in the Warning if Good
7 Superfoods knows that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead
8 as determined pursuant to the quality control methodology set forth in Section 3.4 or if Good
9 Superfoods knows that another Proposition 65 chemical is present which may require a cancer
10 warning.

11 **OPTION 2**

12 ** WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

13 For Option 2, the entire Warning must be in a type size no smaller than the largest type
14 size used for other consumer information (as defined in 27 Cal. Code Regs. 25600.1) on the
15 product. In no case shall the Warning appear in a type size smaller than 6-point type. Further, for
16 Option 2, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a
17 bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than
18 the height of the word “WARNING.” Where the sign, label or shelf tag for the product is not
19 printed using the color yellow, the symbol may be printed in black and white.

20 Regardless of whether Option 1 or Option 2 is used, the Warning shall be securely affixed
21 to or printed upon the container or label of each Covered Product. If the Warning is provided on
22 the label, it must be set off from other surrounding information and enclosed in a box. In addition,
23 for any Covered Product sold over the Internet when a California delivery address is indicated for
24 any purchase of any Covered Product, the Warning must also be provided by including either the
25 Warning itself or a clearly marked hyperlink to the Warning using the word “WARNING” (in all
26 capital and bold letters) on the product display page, or by otherwise prominently displaying the
27 Warning to the purchaser prior to completing the purchase. A Warning is not prominently
28 displayed if the purchaser must search for it in the general content of the website. An asterisk or
29 other identifying method must be utilized to identify which specific products are subject to the

1 Warning.

2 The Warning shall be at least the same size as the largest of any other health or safety
3 warnings also appearing on its website or on the label or container of Good Superfoods' product
4 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
5 statements intended to have the effect of diminishing the impact of the Warning on the average lay
6 person shall accompany the Warning. Further no statements may accompany the Warning that
7 state or imply that the source of the listed chemical has an impact on or results in a less harmful
8 effect of the listed chemical.

9 Good Superfoods must display the Warning with such conspicuousness, as compared with
10 other words, statements or designs on the label or container, or on its website, if applicable, to
11 render the Warning likely to be read and understood by an ordinary individual under customary
12 conditions of purchase or use of the product.

13 3.3 Reformulated Covered Products

14 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
15 Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium
16 Exposure Level" is no more than 4.1 micrograms of cadmium per day as determined by the quality
17 control methodology described in Section 3.4.

18 3.4 Testing and Quality Control Methodology

19 3.4.1 Beginning within one year of the Effective Date and only for Covered
20 Products still being produced by Good Superfoods, Good Superfoods shall arrange for lead
21 and/or cadmium testing of the Covered Products at least once a year for a minimum of three
22 consecutive years by arranging for testing of five randomly selected samples of each of the
23 Covered Products, in the form intended for sale to the end-user, which Good Superfoods
24 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
25 California or "Distributing into the State of California." If tests conducted pursuant to this
26 Section demonstrate that no Warning is required for a Covered Product during each of three
27 consecutive years, then the testing requirements of this Section will no longer be required as to
28 that Covered Product. However, if during or after the three-year testing period, Good

1 Superfoods changes ingredient suppliers for any of the Covered Products and/or reformulates
2 any of the Covered Products, Good Superfoods shall test that Covered Product annually for at
3 least two (2) consecutive years after such change is made.

4 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
5 “Daily Cadmium Exposure Level,” the arithmetic mean of the lead and/or cadmium detection
6 results of the five (5) randomly selected samples of the Covered Products will be controlling.

7 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

12 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
13 independent third party laboratory certified by the California Environmental Laboratory
14 Accreditation Program or an independent third-party laboratory that is registered with the
15 United States Food & Drug Administration.

16 **3.4.5** Nothing in this Consent Judgment shall limit Good Superfoods’ ability to
17 conduct, or require that others conduct, additional testing of the Covered Products, including
18 the raw materials used in their manufacture.

19 **3.4.6** Within thirty (30) days of ERC’s written request, Good Superfoods shall
20 deliver lab reports obtained pursuant to Section 3.4 to ERC. Good Superfoods shall retain all
21 test results and documentation for a period of three years from the date of each test.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney’s fees, and costs, Good Superfoods shall make a total payment of \$50,000.00 (“Total
25 Settlement Amount”) to ERC according to the following payment schedule (the “Periodic
26 Payments”):

- 27 • Payment 1 -- \$25,000.00 within 10 days of the Effective Date (“Due Date”).
- 28 • Payment 2 -- \$8,333.33 within 40 days of the Effective Date (“Due Date”).

- Payment 3 -- \$8,333.33 within 70 days of the Effective Date ("Due Date").
- Payment 4 -- \$8,333.34 within 100 days of the Effective Date ("Due Date").

4.2 Good Superfoods shall make this payment by wire transfer to ERC's account, for which ERC will give Good Superfoods the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.3 \$1,500.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$1,125.00) 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 section 25249.12(c). ERC will retain the remaining 25% (\$375.00) of the civil penalty.

4.4 \$2,917.07 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.5 \$17,848.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney's fees, \$552.90 shall be distributed to Ryan Hoffman as reimbursement of ERC's attorney's fees, while \$27,182.03 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.6 In the event that Good Superfoods fails to remit any of the Periodic Payments owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date, Good Superfoods shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the delinquency to Good Superfoods via electronic mail. If Good Superfoods fails to deliver the delinquent payment within five (5) days from the written notice, the Total Settlement Amount, less any amounts previously paid, shall be immediately due and owing and shall accrue interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010. Additionally, Good Superfoods agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment(s) due under this Consent Judgment.

///

///

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
4 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
5 modified consent judgment.

6 **5.2** If Good Superfoods seeks to modify this Consent Judgment under Section 5.1,
7 then Good Superfoods must provide written notice to ERC of its intent (“Notice of Intent”). If
8 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
9 ERC must provide written notice to Good Superfoods within thirty (30) days of receiving the
10 Notice of Intent. If ERC notifies Good Superfoods in a timely manner of ERC’s intent to meet
11 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
12 Parties shall meet in person or via telephone within thirty (30) days of ERC’s notification of its
13 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
14 proposed modification, ERC shall provide to Good Superfoods a written basis for its position.
15 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
16 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
17 to different deadlines for the meet-and-confer period.

18 **5.3** In the event that Good Superfoods initiates or otherwise requests a modification
19 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
20 modification of the Consent Judgment, Good Superfoods shall reimburse ERC its costs and
21 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
22 arguing the motion or application.

23 **5.4** Where the meet-and-confer process does not lead to a joint motion or
24 application in support of a modification of the Consent Judgment, then either Party may seek
25 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
26 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure
27 section 1021.5.

28 ///

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform Good Superfoods in a reasonably prompt manner of its test results and provide Good
8 Superfoods all supporting testing data and information sufficient to permit Good Superfoods to
9 identify the Covered Products at issue. Good Superfoods shall, within thirty (30) days
10 following such notice, provide ERC with testing information, from an independent third-party
11 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Good
12 Superfoods' compliance with the Consent Judgment, if warranted. The Parties shall first
13 attempt to resolve the matter prior to ERC taking any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

21 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

22 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
23 on behalf of itself and in the public interest, and Good Superfoods and its respective officers,
24 directors, shareholders, members, employees, agents, parent companies, subsidiaries, divisions,
25 suppliers, franchisees, licensees, customers (not including private label customers of Good
26 Superfoods), distributors, wholesalers, retailers, and all other upstream and downstream entities
27 in the distribution chain of any Covered Product, and the predecessors, successors, and assigns
28 of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public

1 interest, hereby fully releases and discharges the Released Parties from any and all claims,
2 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
3 expenses asserted, or that could have been asserted from the handling, use, or consumption of
4 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
5 regulations arising from the failure to provide Proposition 65 warnings on the Covered
6 Products regarding lead and/or cadmium up to and including the Effective Date.

7 **8.2** ERC on its own behalf only, and Good Superfoods on its own behalf only,
8 further waive and release any and all claims they may have against each other for all actions or
9 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
10 65 in connection with the Notices and Amended Complaint up through and including the
11 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
12 right to seek to enforce the terms of this Consent Judgment.

13 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
14 alleged in the Notices and Amended Complaint, and relating to the Covered Products, will
15 develop or be discovered. ERC on behalf of itself only, and Good Superfoods on behalf of
16 itself only, acknowledge that this Consent Judgment is expressly intended to cover and include
17 all such claims up through and including the Effective Date, including all rights of action
18 therefore. ERC and Good Superfoods acknowledge that the claims released in Sections 8.1 and
19 8.2 above may include unknown claims, and nevertheless waive California Civil Code section
20 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

26 ERC on behalf of itself only, and Good Superfoods on behalf of itself only, acknowledge and
27 understand the significance and consequences of this specific waiver of California Civil Code
28 section 1542.

///

///

1 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 and/or cadmium in the Covered Products as set forth in the Notices and Amended Complaint.

4 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of Good
6 Superfoods' products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

14 All notices required to be given to either Party to this Consent Judgment by the other shall
15 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
16 email may also be sent.

17 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Telephone: (619) 500-3090
22 Email: chris.heptinstall@erc501c3.org

23 With a copy to:
24 Michael Freund
25 Michael Freund & Associates
26 1919 Addison Street, Suite 105
27 Berkeley, CA 94704
28 Telephone: (510) 540-1992
Facsimile: (510) 540-5543

///

///

1 **GOOD SUPERFOODS LLC**

2 Wayne Johnson
3 720 Minidoka Ave.
4 Burley, ID 83318

5 With a copy to:
6 Matthew Kaplan
7 Ronie M. Schmelz
8 Tucker Ellis LLP
9 515 S Flower Street, Fl 42
10 Los Angeles, CA 90071
11 Telephone: (213) 430-3309
12 Facsimile: (213) 430-3409

13
14 **12. COURT APPROVAL**

15 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
17 Consent Judgment.

18 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
19 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
20 prior to the hearing on the motion.

21 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
22 void and have no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

28 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, based on the fact

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

4 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

5 If a dispute arises with respect to either Party's compliance with the terms of this Consent
6 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
7 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
8 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

9 **16. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action
12 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
13 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

14 **17. ENTIRE AGREEMENT, AUTHORIZATION**

15 **17.1** This Consent Judgment contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter herein, and any and all
17 prior discussions, negotiations, commitments, and understandings related hereto. No
18 representations, oral or otherwise, express or implied, other than those contained herein have
19 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
20 herein, shall be deemed to exist or to bind any Party.

21 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment.

23 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
24 **CONSENT JUDGMENT**

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

- 28 (1) Find that the terms and provisions of this Consent Judgment represent a fair and

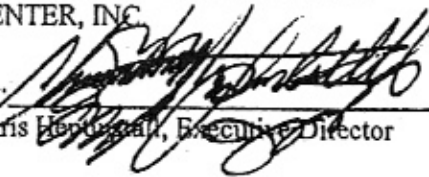
1 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
2 been diligently prosecuted, and that the public interest is served by such settlement; and

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

5
6 **IT IS SO STIPULATED:**

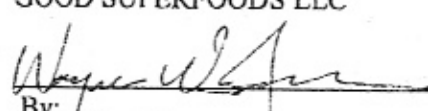
7 Dated: 1/31/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

8
9 By: 
Chris Herd, Executive Director

10
11 Dated: 2/7/19, 2019

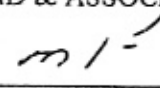
GOOD SUPERFOODS LLC

12
13 By: 
14 Its: President

15
16
17 **APPROVED AS TO FORM:**

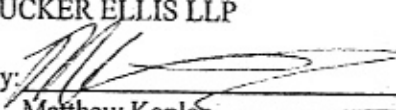
18 Dated: 2/8/, 2019

MICHAEL FREUND & ASSOCIATES

19
20 By: 
21 Michael Freund
22 Attorneys for Plaintiff Environmental
Research Center, Inc.

23 Dated: 2-7-19, 2019

TUCKER ELLIS LLP

24
25 By: 
26 Matthew Kaplan
27 Ronie M. Schmelz
28 Attorney for Defendant Good Superfoods
LLC

1 ORDER AND JUDGMENT

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5
6 Dated: May 09, 2019

7 Paul D. Herbert
8 Judge of the Superior Court

9 PAUL D. HERBERT

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

January 2, 2018

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

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

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

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

Good Superfoods LLC

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

1. Superfood Athlete.com Nutrient Bar Energy Peanut Butter - Lead
2. Superfood Athlete.com Nutrient Bar Energy Triple Cacao - Lead, Cadmium

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 2, 2015, 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; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

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

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Good Superfoods LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

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

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 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: January 2, 2018

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On January 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Good Superfoods LLC
5307 North Glenwood Street
Garden City, ID 83714

Paul Frantellizzi
(Good Superfoods LLC's Registered
Agent for Service of Process)
4276 West Miners Farm Drive
Boise, ID 83714

On January 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

January 2, 2018

Page 5

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

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

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

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

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

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

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

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

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

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

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

On January 2, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 2, 2018, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for

² See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

August 27, 2018

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

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

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

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

Good Superfoods LLC

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

- 1. Superfood Chocolate Mandarin Orange Sculpt – Lead, Cadmium**
- 2. Superfood Chocolate Cocoa Mocha Coffeeberry – Lead, Cadmium**
- 3. Superfood Chocolate Amazon Berry NutriHeart – Lead, Cadmium**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 27, 2015, 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 ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the 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; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

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

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Good Superfoods LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

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

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 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 27, 2018

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On August 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Good Superfoods LLC
5307 North Glenwood St.
Garden City, ID 83714

Paul Frantellizzi
(Registered Agent for Good Superfoods LLC)
4276 West Miners Farm Drive
Boise, ID 83714

On August 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On August 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

August 27, 2018

Page 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On August 27, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on August 27, 2018, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230			

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael Freund SBN 99687
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 371-0885

Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

Plaintiff,

vs.

**GOOD SUPERFOODS LLC and DOES 1-
100**

Defendants.

Case No. RG18896834

CERTIFICATE OF SERVICE

**ASSIGNED FOR ALL PURPOSES TO
JUDGE PAUL D. HERBERT
DEPARTMENT 20**

**Hearing Date: May 7, 2019
Hearing Time: 3:00 p.m.
Reservation No.: R-2048168**

CERTIFICATE OF SERVICE

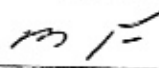
I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On February 20, 2019, I served the within: Notice of Motion and Motion to Approve Proposition 65 Settlement and for Entry of Consent Judgment; Memorandum of Points & Authorities and Declarations of Chris Heptinstall, Michael Freund & Ryan Hoffman in Support Thereof; Affidavit Verifying Compliance With Proposition 65 Requirements, Stipulated Consent Judgment and [Proposed] Statutory Findings and Order Approving Proposition 65 Settlement on the parties in said action, by electronic mail and/or by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California addressed as follows:

Proposition 65 Coordinator
California Attorney General
1515 Clay Street, Suite 2000
Oakland, CA 94612

Matthew Kaplan
Ronie Schmelz
Tucker Ellis LLP
515 South Flower Street, 42nd Floor
Los Angeles, CA 90071

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on February 20, 2019 at Berkeley, California



Michael Freund

Case Number: RG18896834

CLERK'S CERTIFICATE OF MAILING
(CCP 1013a)

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street Oakland, California. I served this ORDER GRANTING MOTION TO APPROVE PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT JUDGMENT and STIPULATED CONSENT JUDGMENT dated May 9, 2019 by placing copies in envelope(s) addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail in Oakland, California, following standard court practices.

Michael Freund & Associates
ATTN: Freund, Michael
1919 Addison Street
Suite 105
Berkeley, CA 94704

Tucker Ellis LLP
AATN: Schmelz, Ronie M.
515 South Flower Street
Los Angeles, CA 90071

Date: May 13, 2019

Chad Finke, Executive Officer/Clerk of the
Superior Court

By 
Lian Sigel-Kwong, Deputy Clerk