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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

16 ENVIRONMENTAL RESEARCH
17 CENTER, INC., a California non-profit
18 corporation

18 Plaintiff,

19 vs.

20 BODY LLC, individually and dba BODY
21 NUTRITION; SABER FOODS, LLC,
22 individually and dba BODY NUTRITION;
23 and DOES 1-100

23 Defendants.

CASE NO. RG19022985

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 14, 2019

Trial Date: None set

25 1. INTRODUCTION

26 1.1 On June 14, 2019, Plaintiff Environmental Research Center, Inc. ("ERC"), a
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
28 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
2 against Body LLC, individually and dba Body Nutrition (“Body Nutrition”), Saber Foods,
3 LLC, individually and dba Body Nutrition and Does 1-100. Subsequently, on August 28, 2019,
4 an Amended Complaint was filed (the operative Complaint referred to hereinafter as the
5 “Complaint”). In this action, ERC alleges that a number of products manufactured, distributed,
6 offered for sale or sold by Body Nutrition contain lead, a chemical listed under Proposition 65
7 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level
8 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
9 “Covered Product” or collectively as “Covered Products”) are: (1) Body Nutrition Gardenia
10 All-Natural Vegan Protein Vanilla Bean, (2) Body Nutrition Trutein Whey, Casein & Egg
11 White Protein Chocolate Peanut Butter Cup, (3) Body Nutrition Trutein Whey, Casein & Egg
12 White Protein Cinnabun, (4) Body Nutrition Trutein Whey, Casein & Egg White Protein Red
13 Velvet Cake, (5) Body Nutrition Trutein Whey, Casein & Egg White Protein Strawberries &
14 Cream, (6) Body Nutrition Trutein Whey, Casein & Egg White Protein Peanut Butter-
15 Marshmallow Cookie, (7) Body Nutrition Gardenia All-Natural Vegan Protein Cinnabun, (8)
16 Body Nutrition Iso-ology Leucine Enhanced Whey Isolate CinnaBun, (9) Body Nutrition
17 Power Pudding Instant Protein Pudding Mix Vanilla, (10) Body Nutrition Power Pudding
18 Instant Protein Pudding Mix Chocolate, (11) Body Nutrition Trutein Whey, Casein & Egg
19 White Protein Naturals Dark Chocolate, (12) Body Nutrition Trutein Whey, Casein & Egg
20 White Protein Naturals Chocolate Peanut Butter Cup, (13) Body Nutrition Aminolution
21 Advanced BCAA + EAA Cocktail Green Apple, (14) Body Nutrition Trutein Whey, Casein &
22 Egg White Protein Chocolate Mint, (15) Body Nutrition Trutein Whey, Casein & Egg White
23 Protein Chocolate, (16) Body Nutrition Trutein Whey, Casein & Egg White Protein Cookies &
24 Cream, (17) Body Nutrition Iso-ology Leucine Enhanced Whey Isolate Chocolate Peanut
25 Butter Cup, (18) Body Nutrition Iso-ology Leucine Enhanced Whey Isolate Chocolate, (19)
26 Body Nutrition Gardenia All-Natural Vegan Protein Mocha, (20) Body Nutrition Trutein
27 Whey, Casein & Egg White Protein Naturals Vanilla Bean, (21) Body Nutrition Aminolution
28 Advanced BCAA + EAA Cocktail Super Fruit, (22) Body Nutrition Aminolution Advanced

1 BCAA + EAA Cocktail Watermelon, (23) Body Nutrition Trutein Whey, Casein & Egg White
2 Protein Lemon Meringue Pie, (24) Body Nutrition Trutein Whey, Casein & Egg White Protein
3 Smores, (25) Body Nutrition Trutein Whey, Casein & Egg White Protein Birthday Cake, and
4 (26) Body Nutrition Trutein Whey, Casein & Egg White Protein Shamrock Shake.

5 1.2 ERC and Body Nutrition are hereinafter referred to individually as a "Party" or
6 collectively as the "Parties."

7 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
8 causes, helping safeguard the public from health hazards by reducing the use and misuse of
9 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
10 and encouraging corporate responsibility.

11 1.4 For purposes of this Consent Judgment, the Parties agree that Body Nutrition is a
12 business entity that has employed ten or more persons at all times relevant to this action and
13 qualifies as a "person in the course of doing business" within the meaning of Proposition 65.
14 Body Nutrition manufactures, distributes, and/or sells the Covered Products. The requirements
15 imposed by Section 3 of this Consent Judgment shall be in effect only during time periods in
16 which Body Nutrition employs ten or more persons. If Body Nutrition contends that the
17 requirements of Section 3 of this Consent Judgment are not in effect because Body Nutrition no
18 longer employs ten or more persons, Body Nutrition will take the following actions: (1) send ERC
19 written notification within fifteen (15) days of invoking relief under this section 1.4; (2) provide
20 ERC with a copy of the United States Internal Revenue Service (IRS) Form 941 for the time
21 period during which Body Nutrition fell below ten employees, and thereafter either: (a) for the
22 following four calendar quarters, or (b) until Body Nutrition employs ten or more people,
23 whichever comes first. If the number of persons employed by Body Nutrition increases to ten or
24 more at any time after the date that Body Nutrition notifies ERC that the number of its employees
25 was less than ten, Body Nutrition shall send ERC a written notification that the number of Body
26 Nutrition's employees has increased to ten or more within thirty (30) days after the date that the
27 number of Body Nutrition's employees increases to ten or more. Body Nutrition shall provide
28 each IRS Form 941 referenced in Section 1.4(2) to ERC within fifteen (15) days from the date it is

1 provided to the IRS.

2 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation
3 dated April 4, 2019, and June 18, 2019, that were served on the California Attorney General,
4 other public enforcers, and Body Nutrition ("Notices"). A true and correct copy of the 60-Day
5 Notices dated April 4, 2019, and June 18, 2019, are attached hereto as Exhibits A and B
6 respectively, and each is incorporated herein by reference. More than 60 days have passed since
7 the Notices were served on the Attorney General, public enforcers, and Body Nutrition and no
8 designated governmental entity has filed a Complaint against Body Nutrition with regard to the
9 Covered Products or the alleged violations.

10 1.6 ERC's Notices and Complaint allege that use of the Covered Products exposes
11 persons in California to lead without first providing clear and reasonable warnings in violation
12 of California Health and Safety Code section 25249.6. Body Nutrition denies all material
13 allegations contained in the Notices and Complaint.

14 1.7 The Parties have entered into this Consent Judgment in order to settle,
15 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
16 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
17 or be construed as an admission by any of the Parties or by any of their respective officers,
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
19 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
20 issue of law, or violation of law.

21 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
23 any current or future legal proceeding unrelated to these proceedings.

24 1.9 The Effective Date of this Consent Judgment is the date on which Body
25 Nutrition receives written notice from ERC that it has been approved and entered as a
26 Judgment by this Court.

27 **2. JURISDICTION AND VENUE**

28 For purposes of this Consent Judgment and any further court action that may become

1 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
2 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
3 over Body Nutrition as to the acts alleged in the Complaint, that venue is proper in Alameda
4 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
5 resolution of all claims up through and including the Effective Date that were or could have
6 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

8 **3.1** Beginning on the Effective Date, Body Nutrition shall be permanently enjoined
9 from manufacturing for sale in the State of California, "Distributing into the State of
10 California," or directly selling in the State of California, any Covered Products which expose a
11 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
12 meets the warning requirements under Section 3.2.

13 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
14 of California" shall mean to directly ship a Covered Product into California for sale in
15 California or to sell a Covered Product to a distributor that Body Nutrition knows or has reason
16 to know will sell the Covered Product in California.

17 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
18 Level" shall be measured in micrograms, and shall be calculated using the following formula:
19 micrograms of lead per gram of product, multiplied by grams of product per serving of the
20 product (using the largest serving size appearing on the product label), multiplied by servings
21 of the product per day (using the largest number of recommended daily servings appearing on
22 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section
23 3.1.3, the amount of lead in the ingredients listed in Table 1 below, if applicable. If the label
24 contains no recommended daily servings, then the number of recommended daily servings
25 shall be one.

26 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
27 Body Nutrition shall be allowed to deduct the amount of lead which is deemed "naturally
28 occurring" in the ingredients listed in Table 1 that are contained in that Covered Product under

1 the following conditions: For each year that Body Nutrition claims entitlement to a “naturally
2 occurring” allowance, Body Nutrition shall comply with the following:

3 (a) Body Nutrition must produce to ERC a written list of each ingredient in the
4 Covered Product for which a “naturally occurring” allowance is claimed;

5 (b) Body Nutrition must produce to ERC documentation of laboratory testing,
6 conducted during the year for which the “naturally occurring” allowance is claimed, that
7 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in
8 each ingredient listed in Table 1 that is contained in the Covered Product and for which Body
9 Nutrition intends to deduct “naturally occurring” lead;

10 (c) If the laboratory testing reveals the presence of lead in any of the ingredients
11 listed in Table 1 that are contained in the Covered Product, Body Nutrition shall be entitled to
12 deduct the amount of lead contained in each ingredient, up to the full amount of the allowance
13 for each ingredient as shown in Table 1, for those ingredients that are in the Covered Product;

14 (d) If the Covered Product does not contain any of the ingredients listed in
15 Table 1, Body Nutrition shall not be entitled to a deduction for “naturally occurring” lead in
16 the Covered Product for those ingredients; and

17 (e) The information required by Sections 3.1.3(a) and (b) shall be provided to
18 ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year that
19 Body Nutrition shall claim entitlement to the “naturally occurring” allowance.

20 TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 1.0 micrograms/gram
Chocolate Liquor	Up to 1.0 micrograms/gram
Cocoa Butter	Up to 0.1 micrograms/gram
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram

1	Magnesium Carbonate	Up to 0.332 micrograms/gram
2	Magnesium Hydroxide	Up to 0.4 micrograms/gram
3	Zinc Gluconate	Up to 0.8 micrograms/gram
4	Potassium Chloride	Up to 1.1 micrograms/gram

6 **3.2 Clear and Reasonable Warnings**

7 If Body Nutrition is required to provide a warning pursuant to Section 3.1, one of the
8 following warnings must be utilized (“Warning”):

9 **OPTION 1**

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

13 Or, **OPTION 2**

14 **WARNING:** [Cancer and]Reproductive Harm - www.P65Warnings.ca.gov/food.

15
16 Body Nutrition shall use the phrase “cancer and” in the Warning if Body Nutrition has
17 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
18 determined pursuant to the quality control methodology set forth in Section 3.4 or if Body
19 Nutrition has reason to believe that another Proposition 65-listed chemical is present at a level that
20 may require a cancer warning.

21 The Warning shall be securely affixed to or printed upon the container or label of each
22 Covered Product that requires a Warning. If the Warning is provided on the label, it must be set
23 off from other surrounding information and enclosed in a box. In addition, for any Covered
24 Product sold over the internet that requires a Warning, the Warning shall appear on the checkout
25 page when a California delivery address is indicated for any such purchase. An asterisk or other
26 identifying method must be utilized to identify which Covered Products on the checkout page are
27 subject to the Warning. In no event shall any internet or website Warning be contained in or made
28 through a link.

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

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

12 3.3 Conforming Covered Products

13 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
14 Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control
15 methodology described in Section 3.4.

16 3.4 Testing and Quality Control Methodology

17 3.4.1 Beginning within one year of the Effective Date, Body Nutrition shall
18 arrange for lead testing of the Covered Products at least once a year for a minimum of two (2)
19 consecutive years by arranging for testing of five randomly selected samples of each of the
20 Covered Products, in the form intended for sale to the end-user, which Body Nutrition intends
21 to sell or is manufacturing for sale in California, directly selling to a consumer in California or
22 "Distributing into the State of California." If tests conducted pursuant to this Section
23 demonstrate that no Warning is required for a Covered Product during each of two (2)
24 consecutive years, then the testing requirements of this Section will no longer be required as to
25 that Covered Product. However, if during or after the two (2)-year testing period, Body
26 Nutrition changes ingredient suppliers for any of the Covered Products and/or reformulates any
27 of the Covered Products, Body Nutrition shall test that Covered Product annually for at least
28 two (2) consecutive years after such change is made.

1 3.4.2 For purposes of measuring the “Daily Lead Exposure Level,” the highest
2 lead detection result of the five (5) randomly selected samples of the Covered Products will be
3 controlling.

4 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
5 laboratory method that complies with the performance and quality control factors appropriate
6 for the method used, including limit of detection, qualification, accuracy, and precision that
7 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
8 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

9 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
10 independent third party laboratory certified by the California Environmental Laboratory
11 Accreditation Program or an independent third-party laboratory that is registered with the
12 United States Food & Drug Administration.

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

16 3.4.6 Within thirty (30) days of ERC’s written request, Body Nutrition shall
17 deliver lab reports obtained pursuant to Section 3.4 to ERC. ERC shall hold and treat all lab
18 reports received from Body Nutrition as strictly confidential. Body Nutrition shall retain all
19 test results and documentation for a period of three (3) years from the date of each test. Any
20 request by ERC for lab reports shall be made in writing prior to the expiration of the three (3)-
21 year retention period identified in this section 3.4.6.

22 4. **SETTLEMENT PAYMENT**

23 4.1 In full satisfaction of all potential civil penalties, additional settlement
24 payments, attorney’s fees, and costs, Body Nutrition shall make a total payment of \$65,000.00
25 (“Total Settlement Amount”) to ERC in two (2) consecutive payments, according to the
26 following payment schedule (“Due Dates”):

27 Payment 1 -- \$32,500.00 within 5 days of the Effective Date

28 Payment 2 -- \$32,500.00 within 35 days of the Effective Date

1 Body Nutrition shall make these payments by wire transfer to ERC's account, for which ERC
2 will give Body Nutrition the necessary account information. The Total Settlement Amount
3 shall be apportioned as follows:

4 4.2 \$21,589.50 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$16,192.13) of the civil penalty to
6 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,397.37) of the civil penalty.

9 4.3 \$4,263.09 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 4.4 \$16,192.09 shall be distributed to ERC as an Additional Settlement Payment
12 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
13 and 3204. ERC will utilize the ASP for activities that address the same public harm as
14 allegedly caused by Defendant in this matter. These activities are detailed
15 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
16 chemicals in dietary supplement products in California. ERC's activities have had, and will
17 continue to have, a direct and primary effect within the State of California because California
18 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
19 supplements and/or by providing clear and reasonable warnings to California consumers prior
20 to ingestion of the products.

21 Based on a review of past years' actual budgets, ERC is providing the following list of
22 activities ERC engages in to protect California consumers through Proposition 65 citizen
23 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
24 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
25 supplement products that may contain lead and are sold to California consumers. This work
26 includes continued monitoring and enforcement of past consent judgments and settlements to
27 ensure companies are in compliance with their obligations thereunder, with a specific focus on
28 those judgments and settlements concerning lead. This work also includes investigation of new

1 companies that ERC does not obtain any recovery through settlement or judgment; (2)
2 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
3 Compliance Program by acquiring products from companies, developing and maintaining a
4 case file, testing products from these companies, providing the test results and supporting
5 documentation to the companies, and offering guidance in warning or implementing a self-
6 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
7 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of
8 contaminated products that reach California consumers by providing access to free testing for
9 lead in dietary supplement products (Products submitted to the program are screened for
10 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
11 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
12 that submitted the product).

13 ERC shall be fully accountable in that it will maintain adequate records to document
14 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
15 are being spent only for the proper, designated purposes described in this Consent Judgment.
16 ERC shall provide the Attorney General, within thirty days of any request, copies of
17 documentation demonstrating how such funds have been spent.

18 4.5 \$22,955.32 shall be distributed to ERC for its in-house legal fees. Except as
19 explicitly provided herein, each Party shall bear its own fees and costs.

20 4.6 In the event that Body Nutrition fails to remit the Total Settlement Amount
21 owed under Section 4 of this Consent Judgment on or before the Due Date, Body Nutrition
22 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
23 shall provide written notice of the delinquency to Body Nutrition via electronic mail. If Body
24 Nutrition fails to deliver the Total Settlement Amount within five (5) days from delivery of the
25 written notice of delinquency, the Total Settlement Amount shall accrue interest at the
26 statutory judgment interest rate provided in the California Code of Civil Procedure section
27 685.010. Additionally, Body Nutrition agrees to pay ERC's reasonable attorney's fees and
28 costs for any efforts to collect the payment 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
4 or (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 Body Nutrition seeks to modify this Consent Judgment under Section 5.1,
7 then Body Nutrition 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 Body Nutrition within thirty (30) days of receiving the
10 Notice of Intent. If ERC notifies Body Nutrition 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 Body Nutrition 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 Body Nutrition 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, Body Nutrition 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. ERC shall not be reimbursed for costs or attorney’s fees for
23 an uncontested motion, or for a ministerial motion (such as a change in name or contact
24 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
25 motion.

26 5.4 Where the meet-and-confer process does not lead to a joint motion or
27 application in support of a modification of the Consent Judgment, then either Party may seek
28 judicial relief on its own.

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
4 terminate this Consent Judgment.

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

13 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

21 8.1 This Consent Judgment is a full, final, and binding resolution between ERC,
22 on behalf of itself and in the public interest, and Body Nutrition and its respective officers,
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of Body Nutrition),
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
27 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
28 hereby fully releases and discharges the Released Parties from any and all claims, actions,

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

6 **8.2** ERC on its own behalf only, and Body Nutrition on its own behalf only,
7 further waive and release any and all claims they may have against each other for all actions or
8 statements made or undertaken in the course of seeking or opposing enforcement of
9 Proposition 65 in connection with the Notices and Complaint up through and including the
10 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
11 right to seek to enforce the terms of this Consent Judgment.

12 **8.3** It is possible that other claims not known to the Parties, arising out of the
13 facts alleged in the Notices and Complaint, and relating to the Covered Products, will develop
14 or be discovered. ERC on behalf of itself only, and Body Nutrition on behalf of itself only,
15 acknowledge that this Consent Judgment is expressly intended to cover and include all such
16 claims up through and including the Effective Date, including all rights of action therefore.
17 ERC and Body Nutrition acknowledge that the claims released in Sections 8.1 and 8.2 above
18 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
19 any such unknown claims. California Civil Code section 1542 reads as follows:

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

24 ERC on behalf of itself only, and Body Nutrition on behalf of itself only, acknowledge and
25 understand the significance and consequences of this specific waiver of California Civil Code
26 section 1542.

27 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
28 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead

1 in the Covered Products as set forth in the Notices and Complaint.

2 8.5 Nothing in this Consent Judgment is intended to apply to any occupational
3 or environmental exposures arising under Proposition 65, nor shall it apply to any of Body
4 Nutrition's products other than the Covered Products.

5 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

9 **10. GOVERNING LAW**

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

12 **11. PROVISION OF NOTICE**

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

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

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

22 With a copy to:
23 Charles W. Poss
24 Environmental Research Center, Inc.
25 3111 Camino Del Rio North, Suite 400
26 San Diego, CA 92108
27 Ph: (619) 500-3090
28 Email: charles.poss@erc501c3.org

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///

1 **FOR BODY LLC, individually and dba BODY NUTRITION:**

2 Greg Simek
3 2950 47th Ave N.
4 St. Petersburg, FL 33714
5 Email: greg@bodynutrition.com

6 With a copy to:
7 Malcolm Weiss
8 Hunton Andrews Kurth LLP
9 550 South Hope Street, Suite 2000
10 Los Angeles, CA 90071
11 Ph: (213) 532-2130
12 Email: mweiss@HuntonAK.com

11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent
16 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and
17 if possible prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court within two
19 (2) years from the date it is executed by the Parties, it shall be void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

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

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
4 equally in the preparation and drafting of this Consent Judgment.

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

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

10 **16. ENFORCEMENT**

11 ERC may, by motion or order to show cause before the Superior Court of Alameda
12 County, enforce the terms and conditions contained in this Consent Judgment. In any action
13 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
14 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
15 To the extent the failure to comply with the Consent Judgment constitutes a violation of
16 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
17 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
18 provided by law for failure to comply with Proposition 65 or other laws.

19 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

26 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment.

28 ///

1 18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
2 CONSENT JUDGMENT

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

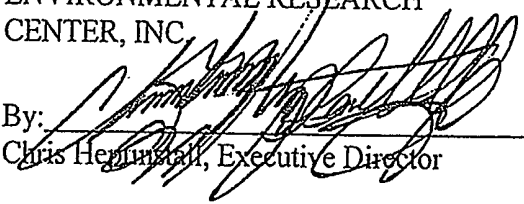
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11
12 IT IS SO STIPULATED:

13
14 Dated: 8/2/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC

15
16 By: 
17 Chris Hennig, Executive Director

18
19 Dated: 8/2, 2019

BODY LLC, individually and dba BODY
NUTRITION

20
21 
22 By: Greg Simek
Its: CEO

23 ///

24 ///

25 ///

26 ///


27 ///

28 ///

1 APPROVED AS TO FORM:

2
3 Dated: August 2, 2019

4 ENVIRONMENTAL RESEARCH
5 CENTER, INC.


6 By: 
7 Charles W. Poss
8 In-House Counsel

9
10 **ORDER AND JUDGMENT**

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

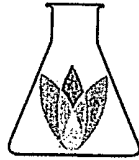
13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14
15 Dated: 11/7, 2019

16 
17 Judge of the Superior Court

18 **NOËL WISE**

EXHIBIT A



Environmental Research Center

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

April 4, 2019

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

Body LLC, individually and dba Body Nutrition
Saber Foods, LLC, individually and dba Body Nutrition

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

1. **Body Nutrition Gardenia All-Natural Vegan Protein Vanilla Bean - Lead**
2. **Body Nutrition Trutein Whey, Casein & Egg White Protein Chocolate Peanut Butter Cup - Lead**
3. **Body Nutrition Trutein Whey, Casein & Egg White Protein Cinnabun - Lead**
4. **Body Nutrition Trutein Whey, Casein & Egg White Protein Red Velvet Cake - Lead**

5. Body Nutrition Trutein Whey, Casein & Egg White Protein Strawberries & Cream - Lead
6. Body Nutrition Trutein Whey, Casein & Egg White Protein Peanut Butter-Marshmallow Cookie - Lead
7. Body Nutrition Gardenia All-Natural Vegan Protein Cinnabun - Lead
8. Body Nutrition Iso-ology Leucine Enhanced Whey Isolate CinnaBun - Lead
9. Body Nutrition Power Pudding Instant Protein Pudding Mix Vanilla - Lead
10. Body Nutrition Power Pudding Instant Protein Pudding Mix Chocolate - Lead
11. Body Nutrition Trutein Whey, Casein & Egg White Protein Naturals Dark Chocolate - Lead
12. Body Nutrition Trutein Whey, Casein & Egg White Protein Naturals Chocolate Peanut Butter Cup - Lead
13. Body Nutrition Aminolution Advanced BCAA + EAA Cocktail Green Apple - Lead
14. Body Nutrition Trutein Whey, Casein & Egg White Protein Chocolate Mint - Lead
15. Body Nutrition Trutein Whey, Casein & Egg White Protein Chocolate - Lead
16. Body Nutrition Trutein Whey, Casein & Egg White Protein Cookies & Cream - Lead
17. Body Nutrition Iso-ology Leucine Enhanced Whey Isolate Chocolate Peanut Butter Cup - Lead
18. Body Nutrition Iso-ology Leucine Enhanced Whey Isolate Chocolate - Lead
19. Body Nutrition Gardenia All-Natural Vegan Protein Mocha - Lead
20. Body Nutrition Trutein Whey, Casein & Egg White Protein Naturals Vanilla Bean - Lead
21. Body Nutrition Aminolution Advanced BCAA + EAA Cocktail Super Fruit - Lead
22. Body Nutrition Aminolution Advanced BCAA + EAA Cocktail Watermelon - Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 4, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and

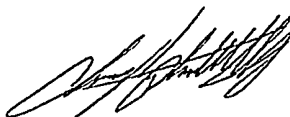
April 4, 2019

Page 3

reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

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

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Body LLC, individually and dba Body Nutrition and Saber Foods, LLC, individually and dba Body Nutrition and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Body LLC, individually and dba Body Nutrition and Saber Foods, LLC, individually and dba Body Nutrition

I, Chris Heptinstall, declare:


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

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

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

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

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



Dated: April 4, 2019

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On April 4, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Body LLC, individually and dba Body Nutrition
2950 47th Avenue N
St. Petersburg, FL 33714

Greg Simek
(Registered Agent for Body LLC, individually and
dba Body Nutrition)
2950 47th Avenue N
St. Petersburg, FL 33714

Current President or CEO
Saber Foods, LLC, individually and dba Body Nutrition
3403 Moss Street
LaFayette, LA 70507

Gregory W. Simek
(Registered Agent for Saber Foods, LLC,
individually and dba Body Nutrition)
3403 Moss Street
LaFayette, LA 70507

Current President or CEO
Saber Foods, LLC, individually and dba Body Nutrition
2950 47th Avenue N
St. Petersburg, FL 33714

On April 4, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 4, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

April 4, 2019

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

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

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

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

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 Ankorn, 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

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

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

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

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

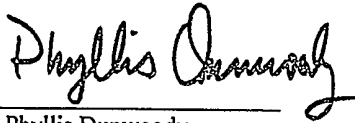
April 4, 2019

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

On April 4, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 4, 2019, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

April 4, 2019

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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	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 Bernadino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	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 Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	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	
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 778 Pacific St. 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, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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, 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	

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>.

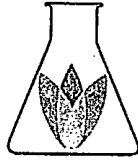
FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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.

EXHIBIT B



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

June 18, 2019

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

Body LLC, individually and dba Body Nutrition
Saber Foods, LLC, individually and dba Body Nutrition

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

1. **Body Nutrition Trutein Whey, Casein & Egg White Protein Lemon Meringue Pie - Lead**
2. **Body Nutrition Trutein Whey, Casein & Egg White Protein Smores - Lead**
3. **Body Nutrition Trutein Whey, Casein & Egg White Protein Birthday Cake - Lead**
4. **Body Nutrition Trutein Whey, Casein & Egg White Protein Shamrock Shake - Lead**

June 18, 2019

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

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

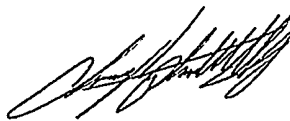
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 18, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

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 Body LLC, individually and dba Body Nutrition and Saber Foods, LLC, individually and dba Body Nutrition and their Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Body LLC, individually and dba Body Nutrition and Saber Foods, LLC, individually and dba Body Nutrition

I, Chris Heptinstall, declare:

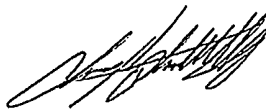
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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

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

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

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



Dated: June 18, 2019

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On June 18, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Body LLC, individually and dba Body Nutrition
2950 47th Avenue N
St. Petersburg, FL 33714

Greg Simek
(Registered Agent for Body LLC, individually and
dba Body Nutrition)
2950 47th Avenue N
St. Petersburg, FL 33714

Current President or CEO
Saber Foods, LLC, individually and dba Body Nutrition
2950 47th Avenue N
St. Petersburg, FL 33714

On June 18, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On June 18, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

June 18, 2019

Page 5

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

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

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

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

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

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

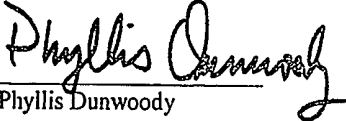
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 18, 2019

Page 6

On June 18, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on June 18, 2019, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 18, 2019

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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	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 Bernadino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	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 Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	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	
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 778 Pacific St. 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, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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, 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	

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.