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**FILED**  
ALAMEDA COUNTY

JUN 10 2021

CLERK OF THE SUPERIOR COURT

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15 and dba EXO, EXO, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

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

**Plaintiff,**

**vs.**

**ASPIRE FOOD GROUP USA, INC.,  
individually and dba EXO; EXO, INC.; and  
DOES 1-100**

**Defendants.**

**CASE NO. RG20071085**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 17, 2020

Trial Date: None set

**1. INTRODUCTION**

On August 17, 2020, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc. (collectively

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1 “EXO”) and Does 1-100. Thereafter, on August 28, 2020, ERC filed a First Amended  
2 Complaint (“FAC”) for Injunctive and Declaratory Relief and Civil Penalties pursuant to the  
3 provisions of Proposition 65 EXO and Does 1-100. Based on ERC’s Notices of Violation  
4 (“Notices”) dated May 7, 2020, June 18, 2020, and March 2, 2021, ERC alleges that a number  
5 of products manufactured, distributed, or sold by EXO contain lead and/or cadmium,  
6 chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and expose  
7 consumers to these chemicals at a level requiring a Proposition 65 warning. These products  
8 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
9 Products”) are: (1) EXO Cricket Protein Bar Blueberry Vanilla (lead), (2) EXO Cricket Protein  
10 Bar-Peanut Butter Chocolate Chip (lead), (3) EXO Whole Roasted Crickets Crispy-Taco (lead),  
11 (4) EXO Cricket Protein Bar Banana Bread (cadmium), (5) EXO Cricket Energy Bar Cocoa  
12 Nut (lead), and (6) EXO Pure Cricket Powder.

13 1.1 ERC and EXO are hereinafter referred to individually as a “Party” or  
14 collectively as the “Parties.”

15 1.2 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
16 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
17 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
18 and encouraging corporate responsibility.

19 1.3 For purposes of this Consent Judgment, the Parties agree that each defendant is a  
20 business entity each of which has employed ten or more persons at all times relevant to this  
21 action, and qualifies as a “person in the course of doing business” within the meaning of  
22 Proposition 65. EXO manufactures, distributes, and/or sells the Covered Products.

23 1.4 The original Complaint and FAC were based on allegations contained in ERC’s  
24 Notices of Violation dated May 7, 2020 and June 18, 2020 that were served on the California  
25 Attorney General, other public enforcers, and EXO (“First Notices”). True and correct copies of  
26 the First Notices, dated May 7, 2020 and June 18, 2020, are attached hereto as *Exhibits A* and *B*,  
27 and each is incorporated herein by reference. More than 60 days have passed since the First  
28 Notices were served on the Attorney General, public enforcers, and EXO and no designated

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1 governmental entity has filed a Complaint against EXO with regard to the Covered Products or  
2 the alleged violations related to the First Notices.

3 1.5 On March 2, 2021, ERC served a third Notice of Violation ("Third Notice") on  
4 the California Attorney General, other public enforcers, and EXO. A true and correct copy of  
5 the Third Notice is attached hereto as *Exhibit C* and incorporated by reference. The parties  
6 agree and stipulate that the FAC shall be deemed amended as of May 3, 2021 to include the  
7 products set forth in ERC's Third Notice and that future references to "Complaint" shall be in  
8 reference to the FAC, as amended. This Consent Judgment shall apply to all Covered Products  
9 set forth in Paragraph 1.1, effective 60 days after March 2, 2021, provided no public enforcer is  
10 diligently pursuing the allegations set forth in ERC's Third Notice. On May 3, 2021 more than  
11 60 days will have passed since ERC's Third Notice was served on the Attorney General, public  
12 enforcers, and EXO.

13 1.6 ERC's Notices and Complaint allege that use of the Covered Products by  
14 California consumers exposes them to lead and/or cadmium without first receiving clear and  
15 reasonable warnings from EXO, which is in violation of California Health and Safety Code  
16 section 25249.6. EXO denies all material allegations contained in the Notices and Complaint.

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

24 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
26 any current or future legal proceeding unrelated to these proceedings.

27 1.9 The Effective Date of this Consent Judgment is the date on which it is entered  
28 as a Judgment by this Court.

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1 **2. JURISDICTION AND VENUE**

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

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

10 **3.1** Beginning on the Effective Date, EXO shall be permanently enjoined from  
11 manufacturing for sale in the State of California, "Distributing into the State of California," or  
12 directly selling in the State of California, any Covered Products that expose a person to a  
13 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or "Daily  
14 Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it meets  
15 the warning requirements under Section 3.2.

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

20 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
21 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
23 product (using the largest serving size appearing on the product label), multiplied by servings  
24 of the product per day (using the largest number of recommended daily servings appearing on  
25 the label), which equals micrograms of lead exposure per day. If the label contains no  
26 recommended daily servings, then the number of recommended daily servings shall be one.

27 **3.1.3** For purposes of this Consent Judgment, the "Daily Cadmium Exposure  
28 Level" shall be measured in micrograms, and shall be calculated using the following formula:

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1 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
2 the product (using the largest serving size appearing on the product label), multiplied by  
3 servings of the product per day (using the largest number of recommended daily servings  
4 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
5 contains no recommended daily servings, then the number of recommended daily servings  
6 shall be one.

### 7 3.2 Clear and Reasonable Warnings

8 If EXO is required to provide a warning pursuant to Section 3.1, the following warning  
9 must be utilized (“Warning”):

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

13 EXO shall use the phrase “cancer and” in the Warning if EXO has reason to believe that  
14 the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined  
15 pursuant to the quality control methodology set forth in Section 3.4 or if EXO has reason to  
16 believe that another Proposition 65 chemical is present which may require a cancer warning. As  
17 identified in the brackets, the warning shall appropriately reflect whether there is lead, cadmium,  
18 or both chemicals present in each of the Covered Products.

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

26 The Warning shall be at least the same size as the largest of any other health or safety  
27 warnings also appearing on the website or on the label and the word “WARNING” shall be in all  
28 capital letters and in bold print. No statements intended to or likely to have the effect of

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1 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
2 Further no statements may accompany the Warning that state or imply that the source of the listed  
3 chemical has an impact on or results in a less harmful effect of the listed chemical.

4 EXO must display the above Warning with such conspicuousness, as compared with other  
5 words, statements or designs on the label, or on its website, if applicable, to render the Warning  
6 likely to be read and understood by an ordinary individual under customary conditions of  
7 purchase or use of the product.

8 For purposes of this Consent Judgment, the term "label" means a display of written,  
9 printed or graphic material that is printed on or affixed to a Covered Product or its immediate  
10 container or wrapper.

### 11 3.3 Conforming Covered Products

12 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure  
13 Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure  
14 Level" is no more than 4.1 micrograms of cadmium per day as determined by the exposure  
15 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
16 3.4, and that is not known by EXO to contain other chemicals that violate Proposition 65's safe  
17 harbor thresholds.

### 18 3.4 Testing and Quality Control Methodology

19 3.4.1 Beginning within one year of the Effective Date, EXO shall arrange for  
20 lead and cadmium testing of the Covered Products at least once a year for a minimum of five  
21 consecutive years by arranging for testing of three (3) randomly selected samples of each of  
22 the Covered Products, in the form intended for sale to the end-user, which EXO intends to sell  
23 or is manufacturing for sale in California, directly selling to a consumer in California or  
24 "Distributing into the State of California." If tests conducted pursuant to this Section  
25 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
26 years, then the testing requirements of this Section will no longer be required as to that  
27 Covered Product. However, if during or after the five-year testing period, EXO changes  
28 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered

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1 Products, EXO shall test that Covered Product annually for at least four (4) consecutive years  
2 after such change is made.

3           3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or  
4 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the  
5 three (3) randomly selected samples of the Covered Products will be controlling.

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

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

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

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

#### 22 4. SETTLEMENT PAYMENT

23           4.1 In full satisfaction of all potential civil penalties, additional settlement  
24 payments, attorney's fees, and costs, EXO shall make a total payment of \$30,000.00 ("Total  
25 Settlement Amount") to ERC within 10 days of the Effective Date ("Due Date"). EXO shall  
26 make this payment by wire transfer to ERC's account, for which ERC will give EXO the  
27 necessary account information. The Total Settlement Amount shall be apportioned as follows:

28           4.2 \$6,000.00 shall be considered a civil penalty pursuant to California Health and

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1 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$4,500.00) of the civil penalty to the  
2 Office of Environmental Health Hazard Assessment ("OEHHHA") for deposit in the Safe  
3 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
4 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,500.00) of the civil penalty.

5 4.3 \$8,106.22 shall be distributed to ERC as reimbursement to ERC for reasonable  
6 costs incurred in bringing this action.

7 4.4 \$15,893.78 shall be distributed to ERC for its in-house legal fees. Except as  
8 explicitly provided herein, each Party shall bear its own fees and costs.

9 4.6 In the event that EXO fails to remit the Total Settlement Amount owed under  
10 Section 4 of this Consent Judgment on or before the Due Date, EXO shall be deemed to be in  
11 material breach of its obligations under this Consent Judgment. ERC shall provide written  
12 notice of the delinquency to EXO via electronic mail. If EXO fails to deliver the Total  
13 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount  
14 shall accrue interest at the statutory judgment interest rate provided in the California Code of  
15 Civil Procedure section 685.010. Additionally, EXO agrees to pay ERC's reasonable attorney's  
16 fees and costs for any efforts to collect the payment due under this Consent Judgment.

17 **5. MODIFICATION OF CONSENT JUDGMENT**

18 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by  
19 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
20 or (ii) by motion of either Party pursuant to Section 5.4 and upon entry by the Court of a  
21 modified consent judgment.

22 5.1 If Defendants seek to modify this Consent Judgment under Section 5.1, then  
23 Defendants must provide written notice to ERC of their intent ("Notice of Intent"). If ERC  
24 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
25 must provide written notice to Defendants within thirty (30) days of receiving the Notice of  
26 Intent. If ERC notifies Defendants in a timely manner of ERC's intent to meet and confer, then  
27 the Parties shall meet and confer in good faith as required in this Section. The Parties shall  
28 meet in person or via telephone within thirty (30) days of ERC's notification of its intent to



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1 meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
2 modification, ERC shall provide to Defendants a written basis for its position. The Parties  
3 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
4 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
5 deadlines for the meet-and-confer period.

6 **5.2 Change in Proposition 65.** If (1) Proposition 65 or its implementing  
7 regulations (including but not limited to the safe harbor “no significant risk level” and  
8 “maximum allowable dose level” for lead or cadmium or any “alternative risk level” adopted by  
9 regulation or California Supreme Court decision) are changed from their terms as they exist on  
10 the date of entry of this Consent Judgment in a manner that impacts the “Daily Lead Exposure  
11 Level” or “Daily Cadmium Exposure Level” for any of the Covered Products, or (2) after entry  
12 of this Consent Judgment, OEHHA takes some other final regulatory action for nutritional  
13 supplement products similar to the Covered Products and such final regulatory action impacts the  
14 “Daily Lead Exposure Level” or the “Daily Cadmium Exposure Level” for any of the Covered  
15 Products, or (3) after entry of this Consent Judgment, OEHHA adopts a regulation that  
16 eliminates the requirement for warnings for lead or cadmium for the Covered Products, then  
17 either Party may seek to modify this Consent Judgment.

18 **5.3** In the event that Proposition 65 is repealed, or otherwise invalidated, by  
19 regulation or California or United States Supreme Court case law, and as a result of such repeal  
20 or invalidation the Covered Products are no longer subject to Proposition 65, then the  
21 Defendants shall have no further obligations as to the injunctive terms pursuant to this Consent  
22 Judgment with respect to, and to the extent that, the Covered Products are so affected.

23 **5.4** In the event that EXO initiates or otherwise requests a modification under  
24 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
25 modification of the Consent Judgment, EXO shall reimburse ERC its costs and reasonable  
26 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the  
27 motion or application.

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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 EXO in a reasonably prompt manner of its test results, including information sufficient  
8 to permit EXO to identify the Covered Products at issue. EXO shall, within thirty (30) days  
9 following such notice, provide ERC with testing information, from an independent third-party  
10 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating EXO's  
11 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter  
12 prior to ERC taking any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
16 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
17 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
18 application to any Covered Product that is distributed or sold exclusively outside the State of  
19 California and that is not used by California 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 EXO and its respective officers, directors,  
23 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
24 franchisees, licensees, customers (not including private label customers of EXO), distributors,  
25 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
26 of any Covered Product, and the predecessors, successors, and assigns of any of them  
27 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby  
28 fully releases and discharges the Released Parties from any and all claims, actions, causes of

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

6 8.2 ERC on its own behalf only, and EXO on its own behalf only, further waive  
7 and release any and all claims they may have against each other for all actions or statements  
8 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in  
9 connection with the Notices and Complaint up through and including the Effective Date,  
10 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
11 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 facts  
13 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
14 discovered. ERC on behalf of itself only, and EXO on behalf of itself only, acknowledge that  
15 this Consent Judgment is expressly intended to cover and include all such claims up through  
16 and including the Effective Date, including all rights of action therefore. ERC and EXO  
17 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
18 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
19 claims. California Civil Code section 1542 reads as follows:

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

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

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1 and/or cadmium 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 or  
3 environmental exposures arising under Proposition 65, nor shall it apply to any of EXO's  
4 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](mailto:chris.heptinstall@erc501c3.org)

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

25 **ASPIRE FOOD GROUP USA, INC., individually and dba EXO; EXO, INC.**

26 Aspire Food Group USA, Inc.  
27 6231 E. Stassney Lane, Suite 105  
28 Austin, Texas 78744  
Contact Name: Jason Jones  
Contact Ph: 512-645-0700  
Contact Email: [jason.jones@aspirefg.com](mailto:jason.jones@aspirefg.com)

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1 David H. Kwasniewski  
 2 BraunHagey & Borden LLP  
 3 351 California St, Fl 10  
 4 San Francisco, CA 94104  
 5 Ph: (415) 599-0210  
 6 Email: kwasniewski@braunhagey.com

6 **12. COURT APPROVAL**

7 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
 8 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
 9 Consent Judgment.

10 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
 11 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
 12 prior to the hearing on the motion.

13 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
 14 void and have no force or effect.

15 **13. EXECUTION AND COUNTERPARTS**

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

19 **14. DRAFTING**

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

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

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

6 **16. ENFORCEMENT**

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

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

DocuSign Envelope ID: D855487C-C2B7-4604-A396-9A0B6E2896DE

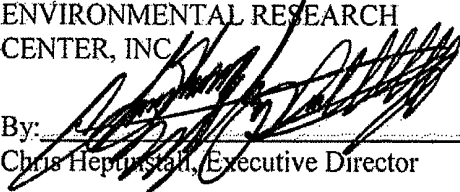
1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
2 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
3 been diligently prosecuted, and that the public interest is served by such settlement; and

4 (2) Make the findings pursuant to California Health and Safety Code section  
5 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

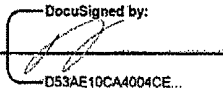
7  
8 Dated: 3/4/, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC

9  
10 By:   
Chris Heptinstall, Executive Director

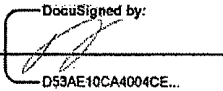
11  
12 Dated: Mar 2, 2021

ASPIRE FOOD GROUP USA, INC.,  
individually and dba EXO

13  
14  
15 By: jason jones   
16 Its: Chief Growth Officer

17  
18 Dated: Mar 2, 2021

EXO, INC.

19  
20 By: jason jones   
21 Its: Chief Executive Officer

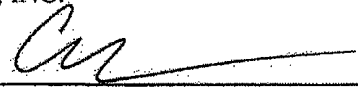
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24 ///  
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28 ///

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1 APPROVED AS TO FORM:

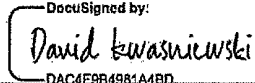
2 Dated: March 4, 2021

ENVIRONMENTAL RESEARCH  
CENTER, INC.

3  
4 By:   
5 Charles W. Poss  
6 In-House Counsel

7  
8 Dated: Mar 2, 2021

BRAUNHAGEY & BORDEN LLP

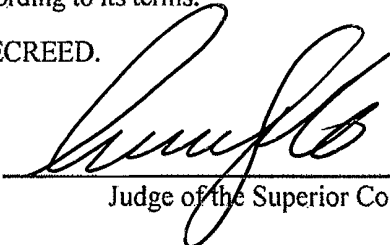
9  
10 By:   
11 David H. Kwasniewski  
12 Attorney for Defendants Aspire Food  
13 Group USA, Inc., individually and dba  
14 EXO, EXO, Inc.

14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18  
19 Dated: June 10, 2021, 2021

  
20 Judge of the Superior Court



# **EXHIBIT A**



## Environmental Research Center

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

May 7, 2020

### 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:

**Aspire Food Group USA, Inc., individually and dba EXO  
EXO, Inc.**

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

- 1. EXO Cricket Protein Bar Blueberry Vanilla - Lead**
- 2. EXO Cricket Protein Bar Peanut Butter Chocolate Chip - Lead**
- 3. EXO Whole Roasted Crickets Crispy Taco - Lead**
- 4. EXO Cricket Protein Bar Banana Bread - Cadmium**

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 7, 2020  
Page 2

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

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 7, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

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 Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc. and their Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 7, 2020  
Page 3

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc.**

I, Chris Heptinstall, declare:

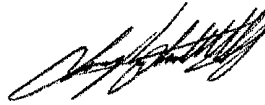
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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

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

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

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



Dated: May 7, 2020

---

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
May 7, 2020  
Page 4

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

On May 7, 2020, 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  
Aspire Food Group USA, Inc.,  
individually and dba EXO  
6231 E Stassney Ln, Bldg 12-105  
Austin, TX 78744

Current President or CEO  
Aspire Food Group USA, Inc.,  
individually and dba EXO  
2028 E Ben White Blvd, Ste 320  
Austin, TX 78741

Current President or CEO  
EXO, Inc.  
68 3<sup>rd</sup> St  
Brooklyn, NY 11231

Mohammed Ashour  
(Registered Agent for Aspire Food Group USA, Inc.  
Individually and dba EXO)  
6231 E Stassney Ln, Bldg 12-105  
Austin, TX 78744

Current President or CEO  
EXO, Inc.  
94 S 4<sup>th</sup> St, Apt 4  
Brooklyn, NY 11249

On May 7, 2020, 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 May 7, 2020, 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  
CEPDPprop65@acgov.org

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

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

May 7, 2020

Page 5

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

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

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
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

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

Mark Ankcom, 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, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

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

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

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

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

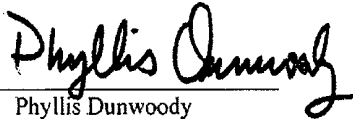
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
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Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

On May 7, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 7, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
 May 7, 2020  
 Page 7

**Service List**

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

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

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

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

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

District Attorney, El Dorado  
 County  
 778 Pacific St.  
 Placerville, CA 95667

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

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

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

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

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

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

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

District Attorney, Los Angeles  
 County  
 Hall of Justice  
 211 West Temple St., Ste 1200  
 Los Angeles, CA 90012

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

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

District Attorney, Mariposa  
 County  
 Post Office Box 730  
 Mariposa, CA 95338

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

District Attorney, Merced  
 County  
 550 W. Main Street  
 Merced, CA 95340

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

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

District Attorney, Nevada  
 County  
 201 Commercial Street  
 Nevada City, CA 95959

District Attorney, Orange  
 County  
 401 West Civic Center Drive  
 Santa Ana, CA 92701

District Attorney, Placer  
 County  
 10810 Justice Center Drive,  
 Ste 240  
 Roseville, CA 95678

District Attorney, Plumas  
 County  
 520 Main Street, Room 404  
 Quincy, CA 95971

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

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

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

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

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

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

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

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

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

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

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

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

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

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

San Jose City Attorney's  
 Office  
 200 East Santa Clara Street,  
 16th Floor  
 San Jose, CA 95113



## APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# **EXHIBIT B**



## Environmental Research Center

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

June 18, 2020

### 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 product 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 this product. 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:

**Aspire Food Group USA, Inc., individually and dba EXO  
EXO, Inc.**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**EXO Cricket Energy Bar Cocoa Nut - 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.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
June 18, 2020  
Page 2

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

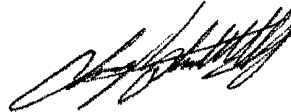
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least June 18, 2017, as well as every day since the product was 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 product. 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 this product 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 Violators to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product 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  
OEHA Summary (to Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc. and their Registered Agent for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)



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

June 18, 2020

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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc.**

I, Chris Heptinstall, declare:

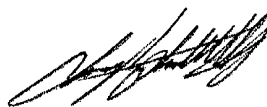
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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, 2020

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Chris Heptinstall

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

June 18, 2020

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**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, 2020, 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  
Aspire Food Group USA, Inc.,  
individually and dba EXO  
6231 E Stassney Ln, Bldg 12-105  
Austin, TX 78744

Mohammed Ashour  
(Registered Agent for Aspire Food Group USA, Inc.  
Individually and dba EXO)  
6231 E Stassney Ln, Bldg 12-105  
Austin, TX 78744

Current President or CEO  
EXO, Inc.  
68 3<sup>rd</sup> St  
Brooklyn, NY 11231

Current President or CEO  
EXO, Inc.  
94 S 4<sup>th</sup> St, Apt 4  
Brooklyn, NY 11249

On June 18, 2020, 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, 2020, 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  
CEPDPprop65@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.*

June 18, 2020

Page 5

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

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

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
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

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

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

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, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

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

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

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

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

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

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

June 18, 2020

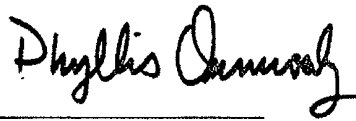
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Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

On June 18, 2020, 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, 2020, in Fort Oglethorpe, Georgia.



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Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
 June 18, 2020  
 Page 7

**Service List**

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

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

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

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

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

District Attorney, El Dorado  
 County  
 778 Pacific St.  
 Placerville, CA 95667

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

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

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

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

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

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

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

District Attorney, Los Angeles  
 County  
 Hall of Justice  
 211 West Temple St., Ste 1200  
 Los Angeles, CA 90012

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

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

District Attorney, Mariposa  
 County  
 Post Office Box 730  
 Mariposa, CA 95338

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

District Attorney, Merced  
 County  
 550 W. Main Street  
 Merced, CA 95340

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

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

District Attorney, Nevada  
 County  
 201 Commercial Street  
 Nevada City, CA 95959

District Attorney, Orange  
 County  
 401 West Civic Center Drive  
 Santa Ana, CA 92701

District Attorney, Placer  
 County  
 10810 Justice Center Drive,  
 Ste 240  
 Roseville, CA 95678

District Attorney, Plumas  
 County  
 520 Main Street, Room 404  
 Quincy, CA 95971

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

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

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

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

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

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

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

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

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

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

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

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

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

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

San Jose City Attorney's  
 Office  
 200 East Santa Clara Street,  
 16th Floor  
 San Jose, CA 95113

## APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> See Section 25501(a)(4).



## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

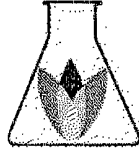
*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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

# **EXHIBIT C**



## Environmental Research Center

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

March 2, 2021

### 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 product 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 this product. 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:

**Aspire Food Group USA, Inc., individually and dba EXO  
EXO, Inc.**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**Exo Pure Cricket Powder - Lead**

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
March 2, 2021  
Page 2

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

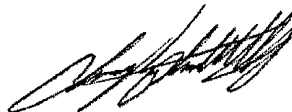
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 2, 2018, as well as every day since the product was 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 product. 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 this product 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 Violators to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product 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 (Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc.)  
Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
March 2, 2021  
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**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Aspire Food Group USA, Inc., individually and dba EXO and EXO, Inc.**

I, Chris Heptinstall, declare:

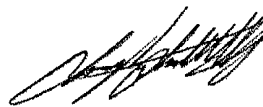
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: March 2, 2021

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Chris Heptinstall

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

March 2, 2021

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**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 March 2, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified 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”** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement::

Aspire Food Group USA, Inc., individually and  
dba EXO and EXO, Inc.  
c/o David H. Kwasniewski  
BraunHagey & Borden LLP  
351 California St, Fl 10  
San Francisco, CA 94104  
Email: kwasniewski@braunhagey.com

On March 2, 2021, 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 March 2, 2021, 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.*

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

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

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

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

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

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

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

Alethea Sargent, Assistant District Attorney  
White Collar Division  
San Francisco District Attorney's Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
alethea.sargent@sfgov.org

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

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

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

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

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

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

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

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

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



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

March 2, 2021

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

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

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

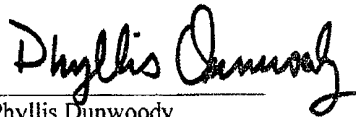
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On March 2, 2021, 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 March 2, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 2, 2021

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Service List

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

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

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

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

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

District Attorney, El Dorado  
County  
778 Pacific St.  
Placerville, CA 95667

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

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

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

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

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

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

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

District Attorney, Los Angeles  
County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

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

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

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

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

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

District Attorney, Orange  
County  
300 N Flower St  
Santa Ana, CA 92703

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

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

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

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

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

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

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

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

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

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

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

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

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

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

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

## APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

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

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

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

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

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

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

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

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

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

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

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: May 2017

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