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

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

12 Plaintiff,

13 v.

14 MBi DISTRIBUTING, INC., individually and
15 dba MBi NUTRACEUTICALS; and DOES 1-
25, Inclusive

16 Defendants.

Case No. RG21088900
[Assigned to Hon. Delbert C. Gee]

NOTICE OF ENTRY OF JUDGMENT

17
18 TO ALL PARTIES AND TO THEIR ATTORNEY'S OF RECORD:

19 PLEASE TAKE NOTICE that the Court entered Judgment in the above-entitled matter.

20 A true and correct copy of the Judgment is attached hereto as Exhibit 1.
21

22
23 Dated: July 23, 2021

WRAITH LAW

William F. Wraith

24 By: _____

25 William F. Wraith
26 Attorney for Plaintiff
Environmental Research Center, Inc.

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EXHIBIT 1

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EXHIBIT 1



FILED
ALAMEDA COUNTY

JUL 13 2021

CLERK OF THE SUPERIOR COURT
By *Befanie Staudel*
Deputy

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14 Attorney for Defendant MBi Distributing, Inc., individually
15 and dba MBi Nutraceuticals

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

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

21 **Plaintiff,**

22 **v.**

23 **MBi DISTRIBUTING, INC., individually**
24 **and dba MBi NUTRACEUTICALS; and**
25 **DOES 1-25, Inclusive,**

26 **Defendants.**

CASE NO. RG21088900

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 16, 2021

Trial Date: None set

27 **1. INTRODUCTION**

28 **1.1** On February 16, 2021, Plaintiff Environmental Research Center, Inc. ("ERC"),
a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against MBI DISTRIBUTING, INC., individually and dba MBI
3 NUTRACEUTICALS (“MBI DISTRIBUTING”) and DOES 1-25. In this action, ERC alleges
4 that a number of products manufactured, distributed, or sold by MBI DISTRIBUTING contain
5 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
8 Products”) are: (1) MBI Nutraceuticals Bio-Greens, (2) MBI Nutraceuticals Bio-Diuretic, (3)
9 MBI Nutraceuticals Artemisia Complex, (4) MBI Nutraceuticals Metabolic Complex, (5) MBI
10 Nutraceuticals HyperStallic, (6) MBI Nutraceuticals Milk Thistle Complex, (7) MBI
11 Nutraceuticals Glucostatin, (8) MBI Nutraceuticals Muscle-Calm, (9) MBI Nutraceuticals
12 Stone Root Complex, and (10) MBI Nutraceuticals Livachol.

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

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

19 **1.4** For purposes of this Consent Judgment, the Parties agree that MBI
20 DISTRIBUTING is a business entity that has employed ten or more persons at all times relevant
21 to this action, and qualifies as a “person in the course of doing business” within the meaning of
22 Proposition 65. MBI DISTRIBUTING manufactures, distributes, and/or sells the Covered
23 Products.

24 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
25 dated October 8, 2020 and December 8, 2020 that were served on the California Attorney
26 General, other public enforcers, and MBI DISTRIBUTING (“Notices”). True and correct
27 copies of the 60-Day Notices dated October 8, 2020 and December 8, 2020 are attached hereto
28 as **Exhibits A** and **B** and each is incorporated herein by reference. More than 60 days have

1 passed since the Notices were served on the Attorney General, public enforcers, and MBI
2 DISTRIBUTING and no designated governmental entity has filed a Complaint against MBI
3 DISTRIBUTING with regard to the Covered Products or the alleged violations.

4 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
5 California consumers exposes them to lead without first receiving clear and reasonable
6 warnings from MBI DISTRIBUTING, which is in violation of California Health and Safety
7 Code section 25249.6. MBI DISTRIBUTING denies all material allegations contained in the
8 Notices and Complaint.

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

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

19 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
20 as a Judgment by this Court.

21 **2. JURISDICTION AND VENUE**

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

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

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

7 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
8 of California" shall mean to directly ship a Covered Product into California for sale in
9 California or to sell a Covered Product to a distributor that MBI DISTRIBUTING knows or
10 has reason to know will sell the Covered Product in California.

11 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
12 Level" shall be measured in micrograms, and shall be calculated using the following formula:
13 micrograms of lead per gram of product, multiplied by grams of product per serving of the
14 product (using the largest serving size appearing on the product label), multiplied by servings
15 of the product per day (using the largest number of recommended daily servings appearing on
16 the label), which equals micrograms of lead exposure per day. If the label contains no
17 recommended daily servings, then the number of recommended daily servings shall be one.

18 **3.1.3** So long as MBI DISTRIBUTING can provide documentation, if
19 requested in writing by ERC, Covered Products shipped, sold, or Distributed into the State of
20 California by MBI DISTRIBUTING prior to the Effective Date are not bound by the injunctive
21 terms set forth in this Section 3, including but not limited to the Daily Lead Exposure Level
22 and warning and testing requirements, and are instead permitted to be sold as is to California
23 Consumers and are expressly released by Section 8 of this Consent Judgment.

24 **3.2 Clear and Reasonable Warnings**

25 If MBI DISTRIBUTING is required to provide a warning pursuant to Section 3.1, one of
26 the following warnings must be utilized ("Warning"):


27 **OPTION 1:**

28 **WARNING:** Consuming this product can expose you to chemicals including [lead] which
is [are] known to the State of California to cause [cancer and] birth defects or other

1 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

2 OR:

3 **OPTION 2:**

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

6 MBI DISTRIBUTING shall use the phrase “cancer and” in the Warning if MBI
7 DISTRIBUTING has reason to believe that the the “Daily Lead Exposure Level” is greater than
8 15 micrograms of lead as determined pursuant to the quality control methodology set forth in
9 Section 3.4 or if MBI DISTRIBUTING has reason to believe that another Proposition 65 chemical
10 is present which may require a cancer warning. For the Option 2 Warning, the entire Warning
11 must be in a type size no smaller than the largest type size used for other consumer information on
12 the product. In no case shall the Warning appear in a type size smaller than 6-point type. Further,
13 for Option 2, a symbol consisting of a black exclamation point in a yellow equilateral triangle
14 with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller
15 than the height of the word “WARNING.” Where the sign, label or shelf tag for the product is not
16 printed using the color yellow, the symbol may be printed in black and white.

17 The Warning shall be securely affixed to or printed upon the label of each Covered
18 Product and, if printed upon the label of each Covered Product, it must be set off from other
19 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
20 the internet, the Warning shall appear prior to checkout on the primary product page, or as a
21 pop-up when a California zip code is input into the shipping instructions, or on the checkout
22 page when a California delivery address is indicated for any purchase of any Covered Product.
23 Where a Warning subject to this section is provided on the checkout page, an asterisk or other
24 identifying method must be utilized on the checkout page to identify which product(s) on the
25 checkout page are subject of the Warning. The Warning may be provided with a conspicuous
26 hyperlink stating “WARNING” in all capital and bold letters so long as they hyperlink goes
27 directly to a page prominently displaying the Warning without content that detracts from the
28 Warning. Given MBI DISTRIBUTING’s lack of control over third-party websites, the online

1 warning requirements expressed in this Section apply only to Covered Products sold through
2 MBI DISTRIBUTING's website. With respect to any downstream reseller customers of MBI
3 DISTRIBUTING who are subject to Proposition 65, MBI DISTRIBUTING may give written
4 notice, including labels, labeling, shelf signs, or tags bearing the Warning and all other
5 necessary warning materials, to the authorized agent of such downstream reseller customers.
6 Such written notice shall instruct the downstream reseller customers that the labels, labeling,
7 shelf signs, or tags bearing the Warning must be displayed on or in proximity to the Covered
8 Products with such conspicuousness, as compared with other words, statements or designs, as
9 to render the Warning likely to be seen, read, and understood by an ordinary individual prior to
10 sale.

11 The Warning shall be at least the same size as the largest of any other health or safety
12 warnings also appearing on the website or on the label and the word "**WARNING**" shall be in all
13 capital letters and in bold print. No statements intended to or likely to have the effect of
14 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
15 Further, no statements may accompany the Warning that state or imply that the source of the listed
16 chemical has an impact on or results in a less harmful effect of the listed chemical.

17 MBI DISTRIBUTING must display the above Warning with such conspicuousness, as
18 compared with other words, statements or designs on the label, or on its website, if applicable, to
19 render the Warning likely to be read and understood by an ordinary individual under customary
20 conditions of purchase or use of the product.

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

24 If subsequently enacted changes to Proposition 65 or its implementing regulations require
25 the use of additional or different information on any warning specifically applicable to the
26 Covered Products (the "New Safe Harbor Warning"), the Parties agree that the New Safe Harbor
27 Warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this
28 Section.

1 **3.3 Conforming Covered Products**

2 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
3 Level” is no greater than 0.5 micrograms of lead per day as determined by the the exposure
4 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
5 3.4, and that is not known by MBI DISTRIBUTING to contain other chemicals that violate
6 Proposition 65’s safe harbor thresholds.

7 **3.4 Testing and Quality Control Methodology**

8 **3.4.1** Beginning within one year of the Effective Date, MBI DISTRIBUTING
9 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
10 three (3) consecutive years by arranging for testing of three (3) randomly selected samples of
11 each of the Covered Products, in the form intended for sale to the end-user, which MBI
12 DISTRIBUTING intends to sell or is manufacturing for sale in California, directly selling to a
13 consumer in California or “Distributing into the State of California.” If tests conducted
14 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
15 each of three consecutive years, then the testing requirements of this Section will no longer be
16 required as to that Covered Product. However, if during or after the three-year testing period,
17 MBI DISTRIBUTING changes ingredient suppliers for any of the Covered Products and/or
18 reformulates any of the Covered Products, MBI DISTRIBUTING shall test that Covered
19 Product annually for at least three (3) consecutive years after such change is made.

20 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
21 lead detection result of the three (3) randomly selected samples of the Covered Products will
22 be controlling.

23 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
24 laboratory method that complies with the performance and quality control factors appropriate
25 for the method used, including limit of detection and limit of quantification, sensitivity,
26 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
27 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010
28 mg/kg.

1 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
2 independent third party laboratory certified by the California Environmental Laboratory
3 Accreditation Program or an independent third-party laboratory that is registered with the
4 United States Food & Drug Administration.

5 3.4.5 Nothing in this Consent Judgment shall limit MBI DISTRIBUTING's
6 ability to conduct, or require that others conduct, additional testing of the Covered Products,
7 including the raw materials used in their manufacture.

8 3.4.6 Within thirty (30) days of ERC's written request, which request shall not
9 be made more than once per year, MBI DISTRIBUTING shall deliver lab reports obtained
10 pursuant to Section 3.4 to ERC. MBI DISTRIBUTING shall retain all test results and
11 documentation for a period of three years from the date of each test.

12 3.4.7 The testing and reporting requirements of Section 3.4 do not apply to
13 any Covered Product for which MBI DISTRIBUTING is providing a Warning, continuously
14 and without interruption from the Effective Date, pursuant to Section 3.2 of this Consent
15 Judgment. In the event a Warning is provided after the Effective Date but MBI
16 DISTRIBUTING thereafter ceases to provide the Warning required by Section 3.2, the testing
17 and reporting requirements of Section 3.4 of this Consent Judgment shall apply beginning
18 within one year after the date the Warning ceases to be provided, unless MBI DISTRIBUTING
19 can show to the satisfaction of ERC that the cessation in providing the Warning was a
20 temporary error that was resolved when discovered.

21 4. **SETTLEMENT PAYMENT**

22 4.1 In full satisfaction of all potential civil penalties, additional settlement
23 payments, attorney's fees, and costs, MBI DISTRIBUTING shall make a total payment of
24 \$35,000 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due
25 Date"). MBI DISTRIBUTING shall make this payment by wire transfer to ERC's account, for
26 which ERC will give MBI DISTRIBUTING the necessary account information. The Total
27 Settlement Amount shall be apportioned as follows:

28 4.2 \$10,700.00 shall be considered a civil penalty pursuant to California Health and

1 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$8,025.00) of the civil penalty to the
2 Office of Environmental Health Hazard Assessment (“OEHHA”) 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% (\$2,675.00) of the civil penalty.

5 4.3 \$2,411.04 shall be distributed to ERC as reimbursement to ERC for reasonable
6 costs incurred in bringing this action.

7 4.4 \$7,971.36 shall be distributed to ERC as an Additional Settlement Payment
8 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
9 and 3204. ERC will utilize the ASP for activities that address the same public harm as
10 allegedly caused by Defendant in this matter. These activities are detailed
11 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
12 chemicals in dietary supplement products in California. ERC’s activities have had, and will
13 continue to have, a direct and primary effect within the State of California because California
14 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
15 supplements and/or by providing clear and reasonable warnings to California consumers prior
16 to ingestion of the products.

17 Based on a review of past years’ actual budgets, ERC is providing the following list of
18 activities ERC engages in to protect California consumers through Proposition 65 citizen
19 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
20 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
21 supplement products that may contain lead and are sold to California consumers. This work
22 includes continued monitoring and enforcement of past consent judgments and settlements to
23 ensure companies are in compliance with their obligations thereunder, with a specific focus on
24 those judgments and settlements concerning lead. This work also includes investigation of new
25 companies that ERC does not obtain any recovery through settlement or judgment; (2)
26 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s Voluntary
27 Compliance Program by acquiring products from companies, developing and maintaining a
28 case file, testing products from these companies, providing the test results and supporting

1 documentation to the companies, and offering guidance in warning or implementing a self-
2 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
3 (up to 5%); maintaining ERC's "Got Lead?" Program which reduces the numbers of
4 contaminated products that reach California consumers by providing access to free testing for
5 lead in dietary supplement products (Products submitted to the program are screened for
6 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
7 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
8 that submitted the product).

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

14 4.5 \$6,965.00 shall be distributed to Wraith Law as reimbursement of ERC's
15 attorney's fees, while \$6,952.60 shall be distributed to ERC for its in-house legal fees. Except
16 as explicitly provided herein, each Party shall bear its own fees and costs.

17 4.6 In the event that MBI DISTRIBUTING fails to remit the Total Settlement
18 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, MBI
19 DISTRIBUTING shall be deemed to be in material breach of its obligations under this Consent
20 Judgment. ERC shall provide written notice of the delinquency to MBI DISTRIBUTING via
21 electronic mail. If MBI DISTRIBUTING fails to deliver the Total Settlement Amount within
22 five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the
23 statutory judgment interest rate provided in the California Code of Civil Procedure section
24 685.010. Additionally, MBI DISTRIBUTING agrees to pay ERC's reasonable attorney's fees
25 and costs for any efforts to collect the payment due under this Consent Judgment.

26 5. MODIFICATION OF CONSENT JUDGMENT

27 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
28 written stipulation of the Parties and upon entry by the Court of a modified consent judgment

1 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
2 modified consent judgment.

3 **5.2** If MBI DISTRIBUTING seeks to modify this Consent Judgment under Section
4 5.1, then MBI DISTRIBUTING must provide written notice to ERC of its intent (“Notice of
5 Intent”). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
6 Intent, then ERC must provide written notice to MBI DISTRIBUTING within thirty (30) days
7 of receiving the Notice of Intent. If ERC notifies MBI DISTRIBUTING in a timely manner of
8 ERC’s intent to meet and confer, then the Parties shall meet and confer in good faith as
9 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
10 days of ERC’s notification of its intent to meet and confer. Within thirty (30) days of such
11 meeting, if ERC disputes the proposed modification, ERC shall provide to MBI
12 DISTRIBUTING a written basis for its position. The Parties shall continue to meet and confer
13 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it
14 become necessary, the Parties may agree in writing to different deadlines for the meet-and-
15 confer period.

16 **5.3** In the event that MBI DISTRIBUTING initiates or otherwise requests a
17 modification under Section 5.1, and the meet and confer process leads to a joint motion or
18 application for a modification of the Consent Judgment, MBI DISTRIBUTING shall reimburse
19 ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-confer process
20 and filing and arguing the motion or application. ERC shall not be reimbursed for costs or
21 attorney’s fees for an uncontested motion, or for a ministerial motion (such as a change in
22 name or contact information) or if ERC does not expend more than two (2) hours of attorney
23 time on the joint motion.

24 **5.4** In the event that Proposition 65 is repealed or preempted as to food products,
25 then MBI DISTRIBUTING shall have no further obligation pursuant to this Consent Judgment
26 with respect to, and to the extent that, the Covered Products are so affected.

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28 ///

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

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
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 MBI DISTRIBUTING in a reasonably prompt manner of its test results, including
8 information sufficient to permit MBI DISTRIBUTING to identify the Covered Products at
9 issue. MBI DISTRIBUTING shall, within thirty (30) days following such notice, provide ERC
10 with testing information, from an independent third-party laboratory meeting the requirements
11 of Sections 3.4.3 and 3.4.4, demonstrating MBI DISTRIBUTING's compliance with the
12 Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any
13 further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

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

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

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

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

28 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to

1 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
2 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

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

6 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

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

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

23 With a copy to:
24 William F. Wraith
25 Wraith Law
26 25361 Commercentre Drive, Ste 150
27 Lake Forest, CA 92630
28 Tel: (949) 452-1234
29 Fax: (949) 452-1102

30 ///

31 ///

1 **FOR MBI DISTRIBUTING, INC., individually and dba MBI NUTRACEUTICALS:**

2 Ned Jensen
3 MBI DISTRIBUTING, Inc.
4 211 N 1800 W
5 Lindon, UT 84042

6 With a copy to:
7 Abhishek K. Gurnani
8 Amin Talati Wasserman LLP
9 100 S. Wacker Drive, Suite 2000
10 Chicago, IL 60606
11 Ph: (312) 327-3325
12 Email: abhishek@amintalati.com

13 **12. COURT APPROVAL**

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

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

20 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
21 void and have no force or effect.

22 **13. EXECUTION AND COUNTERPARTS**

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

26 **14. DRAFTING**

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

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

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

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

9 **16. ENFORCEMENT**

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

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

25 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party he or she represents to stipulate to this Consent Judgment.

27 ///

28 ///

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

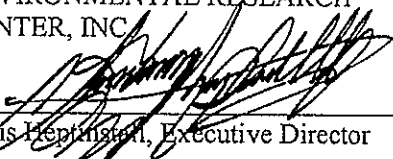
3 This Consent Judgment has come before the Court upon the request of the Parties. The
4 Parties request the Court to fully review this Consent Judgment and, being fully informed
5 regarding the matters which are the subject of this action, to:

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

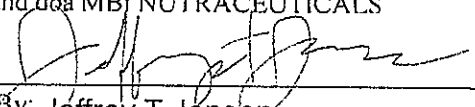
9 (2) Make the findings pursuant to California Health and Safety Code section
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 **IT IS SO STIPULATED:**

12 Dated: 2/26/, 2021

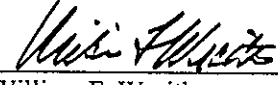
ENVIRONMENTAL RESEARCH
CENTER, INC
By: 
Chris Hepburn, Executive Director

16 Dated: February 25, 2021

17 MBI DISTRIBUTING, INC., individually
18 and dba MBI NUTRACEUTICALS
By: 
19 Its: Jeffrey T Jensen
20 Vice President

21 **APPROVED AS TO FORM:**

22 Dated: February 26, 2021

23 WRAITH LAW
By: 
24 William F. Wraith
25 Attorney for Plaintiff Environmental
26 Research Center, Inc.
27
28

1 Dated: February 25, 2021

AMIN TALATI WASSERMAN LLP

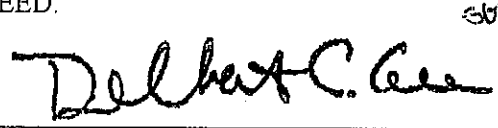
2
3 By: _____
4 Jennifer Adams
5 Attorney for MBI Distributing, Inc.,
individually and dba MBI Nutraceuticals

6 **ORDER AND JUDGMENT**

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

9 IT IS SO ORDERED, ADJUDGED AND DECREED.

10
11 Dated: _____, 2021

12  ^{sb}

Judge of the Superior Court

13 JUDGE DELBERT C. GEE

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EXHIBIT A

EXHIBIT A

EXHIBIT A

WRAITH LAW

25361 Commercentre Drive
Suite 150
Lake Forest, CA 92630
Tel (949) 452-1234
Fax (949) 452-1102

October 8, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to 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 Violator identified below.

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

MBi Distributing, Inc., individually and dba MBi Nutraceuticals

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

1. **MBi Nutraceuticals Bio-Greens - Lead**
2. **MBi Nutraceuticals Bio-Diuretic - Lead**
3. **MBi Nutraceuticals Artemisia Complex - Lead**

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

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

October 8, 2020

Page 2


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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 8, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to MBI Distributing, Inc., individually and dba MBI Nutraceuticals and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by MBI Distributing, Inc., individually and dba MBI Nutraceuticals

I, William F. Wraith, declare:

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

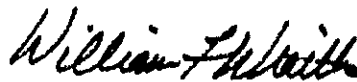
2. I am an attorney for the noticing party.

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

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

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

Dated: October 8, 2020



William F. Wraith

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 October 8, 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 the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
MBi Distributing, Inc., individually
and dba MBI Nutraceuticals
211 N 1800 W
Lindon, UT 84042

Ned Leon Jensen
(Registered Agent for MBI Distributing, Inc.,
individually and dba MBI Nutraceuticals)
368 S Alpine Drive
Alpine, UT 84004

On October 8, 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
Oakland, CA 94612-0550

On October 8, 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** 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

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

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

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

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

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

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

October 8, 2020

Page 5

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

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

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

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

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

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

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

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

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

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

October 8, 2020

Page 6

On October 8, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 8, 2020, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", written in a cursive style.

Phyllis Dunwoody

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

October 8, 2020

Page 7

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453			

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

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EXHIBIT B

EXHIBIT B

EXHIBIT B

WRAITH LAW

25361 Commercentre Drive
Suite 150
Lake Forest, CA 92630
Tel (949) 452-1234
Fax (949) 452-1102

December 8, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to 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 Violator identified below.

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

MBi Distributing, Inc., individually and dba MBi Nutraceuticals

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

1. MBi Nutraceuticals Metabolic Complex - Lead
2. MBi Nutraceuticals HyperStallic - Lead
3. MBi Nutraceuticals Milk Thistle Complex - Lead
4. MBi Nutraceuticals Glucostatin - Lead
5. MBi Nutraceuticals Muscle-Calm - Lead
6. MBi Nutraceuticals Stone Root Complex - Lead
7. MBi Nutraceuticals Livachol - Lead

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

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

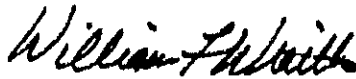
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 8, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



William F. Wraith

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to MBI Distributing, Inc., individually and dba MBI Nutraceuticals and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by MBI Distributing, Inc., individually and dba MBI Nutraceuticals

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: December 8, 2020



William F. Wraith

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 December 8, 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 the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
MBi Distributing, Inc., individually
and dba MBi Nutraceuticals
211 N 1800 W
Lindon, UT 84042

Ned Leon Jensen
(Registered Agent for MBi Distributing, Inc.,
individually and dba MBi Nutraceuticals)
368 S Alpine Drive
Alpine, UT 84004

On December 8, 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
Oakland, CA 94612-0550

On December 8, 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** 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

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

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

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

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

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

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

December 8, 2020

Page 5

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@sdcda.org

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

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

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

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

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

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

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
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221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

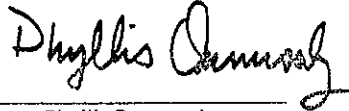
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 8, 2020

Page 6

On December 8, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on December 8, 2020, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Phyllis Dunwoody", written in a cursive style.

Phyllis Dunwoody

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

December 8, 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 4th 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 Bernadino, 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,
2nd 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 2nd 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 AGENCY

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

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

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

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

WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

Case Title: Environmental Research V MBI Distributing, Inc
Case No. RG21088900

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:


I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 24405 Amador Street, Hayward, California. I served the *Stipulated Consent Judgment* by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Wraith, William F.
WRAITH LAW
25361 Commercentre Drive
Suite 150
Lake Forest, CA 92630

Adams, Jennifer M.S.
Amin Talati Wasserman A Limited Liability Partnership
100 South Wacker Drive
Suite 2000
Chicago, IL 60606

Dated: 07/21/2021

Chad Finke
Executive Officer/Clerk of the Superior Court

By: 
Stefanie Gould, Deputy Clerk

1 I, William F. Wraith, am an active member of the State Bar of California and not a
2 party to this action. I am a resident or employed in the county where the mailing took place.
3 My business address is 25361 Commercentre Drive, Suite 150, Lake Forest, CA 92630.

4 On July 23, 2021, I served the foregoing documents described as:

5 **NOTICE OF ENTRY OF JUDGMENT**

6 on the following interested party in this action in the manner identified below:

7 Jennifer M.S. Adams
8 AMIN TALATI WASSERMAN
9 100 South Wacker Drive, South Wacker
10 Suite 2000
11 Chicago, IL 60606
12 Telephone: (312) 466-1033
13 jennifer@amintalati.com
14 Attorneys for Defendant MBI Distributing, Inc. individually and dba MBI Nutraceuticals

15 [X] **BY ELECTRONIC SERVICE:** I caused the above document(s) to be electronically
16 served to the email addresses indicated above.

17 [X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing
18 following this business’s ordinary business practices. I am readily familiar with this
19 business’s practice for collecting and processing correspondence for mailing. On the
20 same day that correspondence is placed for collection and mailing, it is deposited in the
21 ordinary course of business with the United States Postal Service in a sealed envelope
22 with postage fully prepaid.

23 I declare under penalty of perjury under the laws of the State of California that the above is
24 true and correct. Executed on July 23, 2021 at Lake Forest, California.

25 

26 _____
William F. Wraith