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ALAMEDA COUNTY
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 16 individually and dba Bhu Foods

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

CASE NO. RG21094246

**STIPULATED CONSENT
 JUDGMENT**

Plaintiff,

vs.

Health & Safety Code § 25249.5 *et seq.*

**LAURA'S ORIGINAL BOSTON
 BROWNIES, INC., individually and dba
 BHU FOODS; and DOES 1-100**

Action Filed: April 1, 2021
 Trial Date: None set

Defendants.

1. INTRODUCTION

1.1 On April 1, 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") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Laura’s Original Boston Brownies, Inc., individually and dba Bhu
2 Foods (“Bhu Foods”) and Does 1-100. In this action, ERC alleges that a number of products
3 manufactured, distributed, or sold by Bhu Foods contain lead and/or cadmium, chemicals listed
4 under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these
5 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) BHU Fit
7 Plant Protein Chocolate Chip Protein Cookie, (2) BHU Fit Plant Protein Double Dark
8 Chocolate Protein Cookie, (3) BHU Keto The Premier Refrigerated Keto Protein Bar
9 Chocolate Chip Cookie Dough, (4) BHU Keto The Premier Refrigerated Keto Protein Bar
10 Double Dark Chocolate Cookie Dough, (5) BHU Keto The Premier Refrigerated Keto Protein
11 Bar Peanut Butter Chocolate Chip Cookie Dough, and (6) BHU Keto The Premier
12 Refrigerated Keto Protein Bar Chocolate Coconut Cookie Dough.

13 1.2 ERC and Bhu Foods are hereinafter referred to individually as a “Party” or
14 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 Bhu Foods is a
20 business entity that has employed ten or more persons at all times relevant to this action, and
21 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Bhu
22 Foods manufactures, distributes, and/or sells the Covered Products.

23 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation
24 dated December 30, 2020 that was served on the California Attorney General, other public
25 enforcers, and Bhu Foods (“Notice”). A true and correct copy of the 60-Day Notice dated
26 December 30, 2020 is attached hereto as Exhibit A and incorporated herein by reference. More
27 than 60 days have passed since the Notice was served on the Attorney General, public
28 enforcers, and Bhu Foods and no designated governmental entity has filed a Complaint against

1 Bhu Foods with regard to the Covered Products or the alleged violations.

2 1.6 ERC's Notice and Complaint allege that use of the Covered Products by
3 California consumers exposes them to lead and/or cadmium without first receiving clear and
4 reasonable warnings from Bhu Foods, which is in violation of California Health and Safety
5 Code section 25249.6. Bhu Foods denies all material allegations contained in the Notice and
6 Complaint.

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

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

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

19 **2. JURISDICTION AND VENUE**

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

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

28 3.1 Beginning on the Effective Date, Bhu Foods shall be permanently enjoined

1 from manufacturing for sale in the State of California, "Distributing into the State of
2 California," or directly selling in the State of California, any Covered Product that exposes a
3 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
4 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
5 meets the warning requirements under Section 3.2. Notwithstanding the foregoing, so long as
6 Bhu Foods can document the date of manufacture and loss of possession/control of a Covered
7 Product, Covered Products manufactured prior to the Effective Date, and no longer in the
8 possession of or under the control of Bhu Foods as of the Effective Date, may be distributed or
9 sold without a "Warning" (defined below) by any person after the Effective Date without
10 violation of this Consent Judgment.

11 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
12 of California" shall mean to directly ship a Covered Product into California for sale in
13 California or to sell a Covered Product to a distributor that Bhu Foods knows or has reason to
14 know will sell the Covered Product in California.

15 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
16 Level" shall be measured in micrograms, and shall be calculated using the following formula:
17 micrograms of lead per gram of product, multiplied by grams of product per serving of the
18 product (using the largest serving size appearing on the product label), multiplied by servings
19 of the product per day (using the largest number of recommended daily servings appearing on
20 the label), excluding, pursuant to Section 3.1.3, the amount of lead allowances listed in Table 1
21 below, if applicable, which equals micrograms of lead exposure per day. If the label contains
22 no recommended daily servings, then the number of recommended daily servings shall be one.

23 **3.1.3** In calculating Daily Lead Exposure Level for a Covered Product, Bhu
24 Foods shall be allowed to deduct the amount of lead which is deemed "naturally occurring" in
25 the ingredients listed in Table 1 that are contained in that Covered Product under the following
26 conditions: For each year that Bhu Foods claims entitlement to a "naturally occurring"
27 allowance, Bhu Foods shall provide ERC with the following information: (a) Bhu Foods must
28 produce to ERC a written list of each ingredient in the Covered Product for which a "naturally

1 occurring” allowance is claimed; (b) Bhu Foods must provide ERC with documentation of
 2 laboratory testing, conducted during the year for which the “naturally occurring” allowance is
 3 claimed, that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any,
 4 contained in each ingredient listed in **Table 1** that is contained in the Covered Product and for
 5 which Bhu Foods intends to deduct “naturally occurring” lead; (c) if the laboratory testing
 6 reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained in the
 7 Covered Product, Bhu Foods shall be entitled to deduct up to the full amount of the allowance
 8 for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually
 9 contained in that ingredient in the Covered Product; (d) if the Covered Product does not
 10 contain an ingredient listed in **Table 1**, Bhu Foods shall not be entitled to a deduction for
 11 “naturally occurring” lead in the Covered Product for that ingredient. The information
 12 required by Sections 3.1.3(a) and (b) shall be provided to ERC within thirty (30) days of the
 13 Effective Date, or anniversary thereof, for any year that Bhu Foods shall claim entitlement to
 14 the “naturally occurring” allowance:

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 1.0 microgram/gram
Chocolate Liquor	Up to 1.0 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 microgram/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram

1 3.1.4 For purposes of this Consent Judgment, the “Daily Cadmium Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
4 the product (using the largest serving size appearing on the product label), multiplied by
5 servings of the product per day (using the largest number of recommended daily servings
6 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
7 contains no recommended daily servings, then the number of recommended daily servings
8 shall be one.

9 **3.2 Clear and Reasonable Warnings**

10 If Bhu Foods is required to provide a warning pursuant to Section 3.1, the following
11 warning must be utilized (“Warning”):

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

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

22 The Warning shall be securely affixed to or printed upon the label of each Covered
23 Product and it must be set off from other surrounding information and enclosed in a box. In
24 addition, for any Covered Product sold by Bhu Foods over the internet, the Warning shall
25 appear on the primary product information page. In no event shall any internet or website
26 Warning be contained in or made through a link.

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

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

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

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

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

16 3.3 Conforming Covered Products

17 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
18 Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure
19 Level" is no more than 4.1 micrograms of cadmium per day as determined by the exposure
20 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
21 3.4, and that is not known by Bhu Foods to contain other chemicals at levels that violate
22 Proposition 65's safe harbor thresholds.

23 3.4 Testing and Quality Control Methodology

24 3.4.1 Beginning within one year of the Effective Date, Bhu Foods shall
25 arrange for lead and cadmium testing of the Covered Products at least once a year for a
26 minimum of three consecutive years by arranging for testing of three (3) randomly selected
27 samples of each of the Covered Products, in the form intended for sale to the end-user, which
28 Bhu Foods intends to sell or is manufacturing for sale in California, directly selling to a

1 consumer in California or "Distributing into the State of California." If tests conducted
2 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
3 each of three consecutive years, then the testing requirements of this Section will no longer be
4 required as to that Covered Product. However, if during or after the three-year testing period,
5 Bhu Foods changes ingredient suppliers for any of the Covered Products and/or reformulates
6 any of the Covered Products, Bhu Foods shall test that Covered Product annually for at least
7 two (2) consecutive years after such change is made.

8 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
9 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the
10 three (3) randomly selected samples of the Covered Products will be controlling. However,
11 Bhu Foods shall be allowed to retest three additional randomly selected samples and use the
12 highest result from the second selection, if the highest sample of the first set is more than 50%
13 higher than the next highest sample.

14 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
15 laboratory method that complies with the performance and quality control factors appropriate
16 for the method used, including limit of detection and limit of quantification, sensitivity,
17 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
18 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010
19 mg/kg.

20 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
21 independent third party laboratory certified by the California Environmental Laboratory
22 Accreditation Program or an independent third-party laboratory that is registered with the
23 United States Food & Drug Administration.

24 **3.4.5** Nothing in this Consent Judgment shall limit Bhu Foods' ability to
25 conduct, or require that others conduct, additional testing of the Covered Products, including
26 the raw materials used in their manufacture.

27 **3.4.6** Within thirty (30) days of ERC's written request, Bhu Foods shall
28 deliver lab reports obtained pursuant to Section 3.4 to ERC. Bhu Foods shall retain all test

1 results and documentation for a period of five years from the date of each test.

2 **4. SETTLEMENT PAYMENT**

3 **4.1** In full satisfaction of all potential civil penalties, additional settlement
4 payments, attorney's fees, and costs, Bhu Foods shall make a total payment of \$95,000.00
5 ("Total Settlement Amount") to ERC within 10 business days of the Effective Date ("Due
6 Date"). Bhu Foods shall make this payment by wire transfer to ERC's account, for which ERC
7 will give Bhu Foods the necessary account information. The Total Settlement Amount shall be
8 apportioned as follows:

9 **4.2** \$49,750.00 shall be considered a civil penalty pursuant to California Health and
10 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$37,312.50) of the civil penalty to
11 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
12 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
13 Code section 25249.12(c). ERC will retain the remaining 25% (\$12,437.50) of the civil
14 penalty.

15 **4.3** \$3,096.53 shall be distributed to ERC as reimbursement to ERC for reasonable
16 costs incurred in bringing this action.

17 **4.4** \$37,058.95 shall be distributed to ERC as an Additional Settlement Payment
18 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
19 and 3204. ERC will utilize the ASP for activities that address the same public harm as
20 allegedly caused by Defendant in this matter. These activities are detailed
21 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
22 chemicals in dietary supplement products in California. ERC's activities have had, and will
23 continue to have, a direct and primary effect within the State of California because California
24 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
25 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
26 California consumers prior to ingestion of the products.

27 Based on a review of past years' actual budgets, ERC is providing the following list of
28 activities ERC engages in to protect California consumers through Proposition 65 citizen

1 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
2 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
3 supplement products that may contain lead and/or cadmium and are sold to California
4 consumers. This work includes continued monitoring and enforcement of past consent
5 judgments and settlements to ensure companies are in compliance with their obligations
6 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
7 cadmium. This work also includes investigation of new companies that ERC does not obtain
8 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
9 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
10 companies, developing and maintaining a case file, testing products from these companies,
11 providing the test results and supporting documentation to the companies, and offering
12 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
13 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
14 Lead?" Program which reduces the numbers of contaminated products that reach California
15 consumers by providing access to free testing for lead in dietary supplement products (Products
16 submitted to the program are screened for ingredients which are suspected to be contaminated,
17 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
18 the results shared with the consumer that submitted the product).

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

24 4.5 \$5,094.52 shall be distributed to ERC for its in-house legal fees. Except as
25 explicitly provided herein, each Party shall bear its own fees and costs.

26 4.6 In the event that Bhu Foods fails to remit the Total Settlement Amount owed
27 under Section 4 of this Consent Judgment on or before the Due Date, Bhu Foods shall be
28 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall

1 provide written notice of the delinquency to Bhu Foods via electronic mail. If Bhu Foods fails
2 to deliver the Total Settlement Amount within five (5) days from the written notice, the Total
3 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the
4 California Code of Civil Procedure section 685.010. Additionally, Bhu Foods agrees to pay
5 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under
6 this Consent Judgment.

7 5. MODIFICATION OF CONSENT JUDGMENT

8 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
9 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
10 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
11 modified consent judgment.

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

24 5.3 In the event that Bhu Foods initiates or otherwise requests a modification under
25 Section 5.1, and the meet and confer process leads to a joint motion or application for a
26 modification of the Consent Judgment, Bhu Foods shall reimburse ERC its costs and
27 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
28 arguing the motion or application.

1 **5.4** In the event that Proposition 65 is repealed or preempted as to food products,
2 then Bhu Foods shall have no further obligation pursuant to this Consent Judgment with respect
3 to, and to the extent that, the Covered Products are so affected.

4 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
5 **JUDGMENT**

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
7 terminate this Consent Judgment.

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

16 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

24 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
25 on behalf of itself and in the public interest, and Bhu Foods and its respective officers,
26 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
27 franchisees, licensees, customers (not including private label customers of Bhu Foods),
28 distributors, wholesalers, retailers, and all other upstream and downstream entities in the

1 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
2 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
3 hereby fully releases and discharges the Released Parties from any and all claims, actions,
4 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
5 asserted, or that could have been asserted from the handling, use, or consumption of the
6 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
7 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
8 lead and/or cadmium up to and including the Effective Date.

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

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

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

27 ERC on behalf of itself only, and Bhu Foods on behalf of itself only, acknowledge and
28 understand the significance and consequences of this specific waiver of California Civil Code

1 section 1542.

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

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

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

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

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

1 **LAURA'S ORIGINAL BOSTON BROWNIES, INC., individually and dba BHU FOODS**

2 Laura Katleman
3 Laura's Original Boston Brownies
4 2735 Cactus Road, Suite 101
5 San Diego, CA 92154
6 Email: laura@bhufoods.com

7 With a copy to:
8 Angela L. Diesch
9 Diesch Law Group, APC
10 3000 Lava Ridge Ct #110
11 Roseville, CA 95661
12 Ph: (916) 740-6470
13 Email: angela@dieschlawgroup.com

14 Parties may distribute revised addresses for purposes of Notice pursuant to this provision
15 by informing the other parties at their last known U.S. mail and email addresses.

16 **12. COURT APPROVAL**

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

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

23 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
24 void and have no force or effect.

25 **13. EXECUTION AND COUNTERPARTS**

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

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for
each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms

1 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
3 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
4 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
5 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
6 equally in the preparation and drafting of this Consent Judgment.

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

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

12 **16. ENFORCEMENT**

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

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

28 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully

1 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

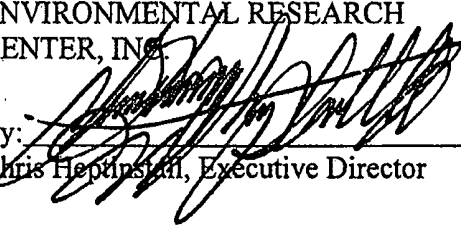
7 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
8 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
9 been diligently prosecuted, and that the public interest is served by such settlement; and

10 (2) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

12 **IT IS SO STIPULATED:**


13
14 Dated: April 23, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

15
16 By: 
17 Chris Hepinslan, Executive Director

18
19 Dated: April 22, 2021

LAURA'S ORIGINAL BOSTON
BROWNIES, INC., individually and dba
20 BHU FOODS

21 
22
23 By: Laura Katleman
Its: Founder and President

24
25 ///

26 ///


27 ///

28 ///

1 **APPROVED AS TO FORM:**


2 Dated: April 23, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

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

7 Dated: April 22, 2021

DIESCH LAW GROUP, APC

8
9 By: 
10 Angela L. Diesch
11 Stephen E. Paffrath
12 Attorneys for Defendant Laura's Original
13 Boston Brownies, Inc., individually and
14 dba Bhu Foods
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

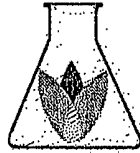
Dated: JUL 01 , 2021



Judge of the Superior Court

RICHARD L. SEABOLT

EXHIBIT A



Environmental Research Center

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

December 30, 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 am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged 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:

Laura's Original Boston Brownies, Inc., individually and dba Bhu Foods

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

1. BHU Fit Plant Protein Chocolate Chip Protein Cookie - Lead
2. BHU Fit Plant Protein Double Dark Chocolate Protein Cookie - Lead
3. BHU Keto The Premier Refrigerated Keto Protein Bar Chocolate Chip Cookie Dough - Cadmium
4. BHU Keto The Premier Refrigerated Keto Protein Bar Double Dark Chocolate Cookie Dough - Cadmium

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
December 30, 2020
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5. **BHU Keto The Premier Refrigerated Keto Protein Bar Peanut Butter Chocolate Chip Cookie Dough - Cadmium**
6. **BHU Keto The Premier Refrigerated Keto Protein Bar Chocolate Coconut Cookie Dough - Cadmium**

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

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

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

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

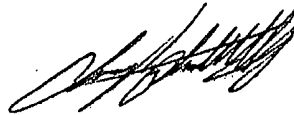
Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 30, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
December 30, 2020
Page 3

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

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Laura's Original Boston Brownies, Inc., individually and dba Bhu Foods and their Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
December 30, 2020
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Laura's Original Boston Brownies, Inc., individually and dba Bhu Foods

I, Chris Heptinstall, declare:

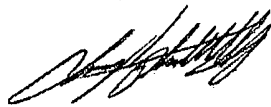
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

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

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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 30, 2020

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
December 30, 2020
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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On December 30, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Laura's Original Boston Brownies, Inc.,
individually and dba Bhu Foods
818 Vanderbilt Place
San Diego, CA 92103

Laura Katleman
(Registered Agent for Laura's Original Boston
Brownies, Inc., individually and dba Bhu Foods)
818 Vanderbilt Place
San Diego, CA 92103

Current President or CEO
Laura's Original Boston Brownies, Inc.,
individually and dba Bhu Foods
2735 Cactus Rd, Ste 101
San Diego, CA 92154

Current President or CEO
Laura's Original Boston Brownies, Inc.,
individually and dba Bhu Foods
1022 W Morena Blvd, Ste F
San Diego, CA 92110

On December 30, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On December 30, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPProp65@acgov.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Envy@co.calaveras.ca.us

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

December 30, 2020

Page 6

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

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

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

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

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

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

Mark Ankorn, 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

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

December 30, 2020

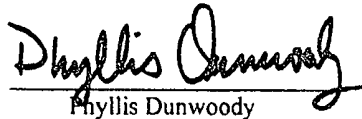
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Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

On December 30, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on December 30, 2020, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
 December 30, 2020
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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
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 Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
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, Shasta County 1355 West Street Redding, CA 96001	
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, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
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, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, El Dorado County 778 Pacific St. Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
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, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
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, Tehama County Post Office Box 519 Red Bluff, CA 96080	
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, Trinity County Post Office Box 310 Weaverville, CA 96093	
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, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
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, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	

APPENDIX A

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

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

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

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


Superior Court of California, County of Alameda
Hayward Hall of Justice

Case Number RG21094246

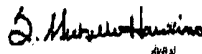
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage pre-paid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, CA.

Executed on: July 2, 2021

 Poss. Charles
Environmental Research Center, Inc.
3111 Camino Del Rio North
Suite 400
San Diego, CA 92108

Chad Finke Executive Officer / Clerk of the Superior Court

By 
S. Murrell-Hausman
DPS

Deputy Clerk