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1 Charles W. Poss (SBN 325366)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: charles.poss@erc501c3.org

7 Attorney for Plaintiff Environmental Research Center, Inc.

8 Ramon Derek Brett Livingston (SBN 326596)
9 Law Office of Rachel Ewing
10 901 Corporate Center Drive, Suite 580
11 Monterey Park, CA 91754
12 Ph (323) 246-6565
13 Email: livingstonr@ladinc.org

14 Attorney for Defendant Bare Performance Nutrition LLC

FILED
Superior Court of California
County of Alameda

06/09/2022

Claud Fluke, Executive Officer / Clerk of the Court

By: Angel Logan Deputy
Angel Logan

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**BARE PERFORMANCE NUTRITION
LLC and DOES 1-100**

Defendants.

CASE NO. RG21103077

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 23, 2021

Trial Date: None set

1. INTRODUCTION

1.1 On June 23, 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 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Bare Performance Nutrition LLC (“Bare Performance Nutrition”) and Does 1-100.

1 Subsequently, on July 2, 2021, a First Amended Complaint was filed. A Second Amended
2 Complaint was filed on November 1, 2021 (hereinafter referred to as the operative
3 “Complaint”). In this action, ERC alleges that a number of products manufactured, distributed,
4 or sold by Bare Performance Nutrition contain lead and/or mercury, chemicals listed under
5 Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these
6 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
7 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) BPN Bare
8 Performance Nutrition G.1.M Sport Go One More Lemon Lime (lead, mercury), (2) BPN Bare
9 Performance Nutrition Vegan Protein Chocolate (lead), (3) BPN Bare Performance Nutrition
10 In-Focus Cognitive Enhancer Blue Snow Cone (lead, mercury), (4) BPN Bare Performance
11 Nutrition Strong Greens Superfood Greens Powder Pineapple Coconut (lead), (5) BPN Bare
12 Performance Nutrition Strong Greens Superfood Greens Powder Lemon (lead), (6) BPN Bare
13 Performance Nutrition Strong Reds Superfood Reds Powder Strawberry (lead), (7) BPN Bare
14 Performance Nutrition In-Focus Cognitive Enhancer Raspberry Lemonade (lead), (8) BPN
15 Bare Performance Nutrition G.1.M Sport Go One More Fruit Punch (lead), (9) BPN Bare
16 Performance Nutrition Whey Protein Nutter Bar Blast (mercury), (10) BPN Bare Performance
17 Nutrition Whey Protein Vanilla (mercury), and (11) BPN Bare Performance Nutrition Whey
18 Protein Fruity Cereal (mercury).

19 **1.2** ERC and Bare Performance Nutrition are hereinafter referred to individually as
20 a “Party” or collectively as the “Parties.”

21 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
22 causes, helping safeguard the public from health hazards by reducing the use and misuse of
23 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
24 and encouraging corporate responsibility.

25 **1.4** For purposes of this Consent Judgment, the Parties agree that Bare Performance
26 Nutrition is a business entity that has employed ten or more persons at all times relevant to this
27 action, and qualifies as a “person in the course of doing business” within the meaning of
28 Proposition 65. Bare Performance Nutrition manufactures, distributes, and/or sells the Covered

1 Products.

2 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
3 dated April 13, 2021, April 22, 2021, and July 29, 2021 that were served on the California
4 Attorney General, other public enforcers, and Bare Performance Nutrition (“Notices”). True and
5 correct copies of the 60-Day Notices dated April 13, 2021, April 22, 2021, and July 29, 2021
6 are attached hereto as *Exhibits A, B, and C* and each is incorporated herein by reference. More
7 than 60 days have passed since the Notices were served on the Attorney General, public
8 enforcers, and Bare Performance Nutrition and no designated governmental entity has filed a
9 Complaint against Bare Performance Nutrition with regard to the Covered Products or the
10 alleged violations.

11 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
12 California consumers exposes them to lead and/or mercury without first receiving clear and
13 reasonable warnings from Bare Performance Nutrition, which is in violation of California
14 Health and Safety Code section 25249.6. Bare Performance Nutrition denies all material
15 allegations contained in the Notices and Complaint.

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

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

26 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
27 as a Judgment by this Court.

28 ///

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment and any further court action that may become
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
5 over Bare Performance Nutrition as to the acts alleged in the Complaint, that venue is proper in
6 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
7 final resolution of all claims up through and including the Compliance Date (defined in Section
8 3.1) that were or could have been asserted in this action based on the facts alleged in the Notices
9 and Complaint.

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

11 **3.1** Beginning sixty (60) days after the Effective Date (the “Compliance Date”),
12 Bare Performance Nutrition shall be permanently enjoined from manufacturing for sale in the
13 State of California, “Distributing into the State of California,” or directly selling in the State of
14 California, any Covered Product that exposes a person to a “Daily Lead Exposure Level” of
15 more than 0.5 micrograms of lead per day and/or “Daily Mercury Exposure Level” of more
16 than 0.3 micrograms of mercury per day unless it meets the warning requirements under
17 Section 3.2.

18 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
19 of California” shall mean to directly ship a Covered Product into California for sale in
20 California or to sell a Covered Product to a distributor that Bare Performance Nutrition knows
21 or has reason to know will sell the Covered Product in California.

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

1 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
4 product (using the largest serving size appearing on the product label), multiplied by servings
5 of the product per day (using the largest number of recommended daily servings appearing on
6 the label), which equals micrograms of mercury exposure per day. If the label contains no
7 recommended daily servings, then the number of recommended daily servings shall be one.

8 **3.2 Clear and Reasonable Warnings**

9 If Bare Performance Nutrition is required to provide a warning pursuant to Section 3.1, the
10 following warning must be utilized (“Warning”):

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

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

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

28 The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all
2 capital letters and in bold print. No statements intended to or likely to have the effect of
3 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
4 Further no statements may accompany the Warning that state or imply that the source of the listed
5 chemical has an impact on or results in a less harmful effect of the listed chemical.

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

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

13 **3.3 Conforming Covered Products**

14 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
15 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Mercury Exposure
16 Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure
17 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
18 3.4, and that is not known by Bare Performance Nutrition to contain other chemicals that violate
19 Proposition 65’s safe harbor thresholds.

20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** Beginning within one year of the Effective Date, Bare Performance
22 Nutrition shall arrange for lead and mercury testing of the Covered Products at least once a
23 year for a minimum of three consecutive years by arranging for testing of three (3) randomly
24 selected samples of each of the Covered Products, in the form intended for sale to the end-user,
25 which Bare Performance Nutrition intends to sell or is manufacturing for sale in California,
26 directly selling to a consumer in California or “Distributing into the State of California.” If
27 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
28 Product during each of five consecutive years, then the testing requirements of this Section will

1 no longer be required as to that Covered Product. However, if during or after the five-year
2 testing period, Bare Performance Nutrition changes ingredient suppliers for any of the Covered
3 Products and/or reformulates any of the Covered Products, Bare Performance Nutrition shall
4 test that Covered Product annually for at least two (2) consecutive years after such change is
5 made.

6 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
7 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three
8 (3) randomly selected samples of the Covered Products will be controlling.

9 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
10 laboratory method that complies with the performance and quality control factors appropriate
11 for the method used, including limit of detection and limit of quantification, sensitivity,
12 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
13 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
14 mg/kg.

15 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
16 independent third party laboratory certified by the California Environmental Laboratory
17 Accreditation Program or an independent third-party laboratory that is registered with the
18 United States Food & Drug Administration or an independent third party laboratory agreed
19 upon in writing by the parties.

20 **3.4.5** Nothing in this Consent Judgment shall limit Bare Performance
21 Nutrition’s ability to conduct, or require that others conduct, additional testing of the Covered
22 Products, including the raw materials used in their manufacture.

23 **3.4.6** Within thirty (30) days of ERC’s written request, Bare Performance
24 Nutrition shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Bare Performance
25 Nutrition shall retain all test results and documentation for a period of three years from the date
26 of each test.

27 **4. SETTLEMENT PAYMENT**

28 **4.1** In full satisfaction of all potential civil penalties, additional settlement

1 payments, attorney's fees, and costs, Bare Performance Nutrition shall make a total payment of
2 \$90,000.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due
3 Date"). Bare Performance Nutrition shall make this payment by wire transfer to ERC's
4 account, for which ERC will give Bare Performance Nutrition the necessary account
5 information. The Total Settlement Amount shall be apportioned as follows:

6 **4.2** \$38,525.00 shall be considered a civil penalty pursuant to California Health and
7 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$28,893.75) of the civil penalty to
8 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
10 Code section 25249.12(c). ERC will retain the remaining 25% (\$9,631.25) of the civil penalty.

11 **4.3** \$5,729.14 shall be distributed to ERC as reimbursement to ERC for reasonable
12 costs incurred in bringing this action.

13 **4.4** \$28,892.85 shall be distributed to ERC as an Additional Settlement Payment
14 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
15 and 3204. ERC will utilize the ASP for activities that address the same public harm as
16 allegedly caused by Defendant in this matter. These activities are detailed below and support
17 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
18 dietary supplement products in California. ERC's activities have had, and will continue to
19 have, a direct and primary effect within the State of California because California consumers
20 will be benefitted by the reduction and/or elimination of exposure to lead and/or mercury in
21 dietary supplements and/or by providing clear and reasonable warnings to California
22 consumers prior to ingestion of the products.

23 Based on a review of past years' actual budgets, ERC is providing the following list of
24 activities ERC engages in to protect California consumers through Proposition 65 citizen
25 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
26 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
27 supplement products that may contain lead and/or mercury and are sold to California
28 consumers. This work includes continued monitoring and enforcement of past consent

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

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

20 **4.5** \$16,853.01 shall be distributed to ERC for its in-house legal fees. Except as
21 explicitly provided herein, each Party shall bear its own fees and costs.

22 **4.6** In the event that Bare Performance Nutrition fails to remit the Total Settlement
23 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, Bare
24 Performance Nutrition shall be deemed to be in material breach of its obligations under this
25 Consent Judgment. ERC shall provide written notice of the delinquency to Bare Performance
26 Nutrition via electronic mail. If Bare Performance Nutrition fails to deliver the Total
27 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
28 shall accrue interest at the statutory judgment interest rate provided in the California Code of

1 Civil Procedure section 685.010. Additionally, Bare Performance Nutrition agrees to pay
2 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under
3 this Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

22 **5.3** In the event that Bare Performance Nutrition initiates or otherwise requests a
23 modification under Section 5.1, and the meet and confer process leads to a joint motion or
24 application for a modification of the Consent Judgment, Bare Performance Nutrition shall
25 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
26 confer process and filing and arguing the motion or application.

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

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

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

14 **7. APPLICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
16 respective officers, directors, shareholders, 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 application
19 to any Covered Product that is distributed or sold exclusively outside the State of California and
20 that is not used by California consumers.

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

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

1 **8.2** ERC, acting in the public interest, releases the Released Parties from any
2 and all claims for violations of Proposition 65 up through the Compliance Date based on
3 exposure to lead and/or mercury from the Covered Products as set forth in the Notices of
4 Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released
5 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
6 penalties, fees, costs, and expenses asserted, or that could have been asserted from the
7 handling, use, or consumption of the Covered Products, as to any alleged violation of
8 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
9 65 warnings on the Covered Products regarding lead and/or mercury up to and including the
10 Compliance Date

11 **8.3** ERC on its own behalf only, and Bare Performance Nutrition on its own
12 behalf only, further waive and release any and all claims they may have against each other for
13 all actions or statements made or undertaken in the course of seeking or opposing enforcement
14 of Proposition 65 in connection with the Notices and Complaint up through and including the
15 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
16 right to seek to enforce the terms of this Consent Judgment.

17 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
18 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
19 discovered. ERC on behalf of itself only, and Bare Performance Nutrition on behalf of itself
20 only, acknowledge that this Consent Judgment is expressly intended to cover and include all
21 such claims up through and including the Compliance Date, including all rights of action
22 therefore. ERC and Bare Performance Nutrition acknowledge that the claims released in
23 Sections 8.2 and 8.3 above may include unknown claims, and nevertheless waive California
24 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542
25 reads as follows:

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

1 PARTY.

2 ERC on behalf of itself only, and Bare Performance Nutrition on behalf of itself only,
3 acknowledge and understand the significance and consequences of this specific waiver of
4 California Civil Code section 1542.

5 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
6 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
7 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
8 Complaint.

9 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
10 environmental exposures arising under Proposition 65, nor shall it apply to any of Bare
11 Performance Nutrition's products other than the Covered Products.

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

16 **10. GOVERNING LAW**

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

19 **11. PROVISION OF NOTICE**

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

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

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

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1 With a copy to:
2 Charles W. Poss
3 Environmental Research Center, Inc.
4 3111 Camino Del Rio North, Suite 400
5 San Diego, CA 92108
6 Ph: (619) 500-3090
7 Email: charles.poss@erc501c3.org

8 **FOR BARE PERFORMANCE NUTRITION LLC:**

9 Nick Bare
10 CEO, Bare Performance Nutrition
11 nick@bareperformancenutrition.com
12 3161 Eagles Nest Street, Suite 360
13 Round Rock, TX 78665

14 With a copy to:
15 Anthony M. Davis, Esquire
16 Argos Legal Group, P.C.
17 1 Beacon Street, Suite 1500
18 Boston, MA 02108
19 Ph (781) 241-3286
20 Email: ADavis@argoslegalgroup.com

21 **12. COURT APPROVAL**

22 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
23 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
24 Consent Judgment.

25 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
27 prior to the hearing on the motion.

28 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

2 The terms of this Consent Judgment have been reviewed by the respective counsel for
3 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
4 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
5 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
6 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
7 that one of the Parties and/or one of the Parties’ legal counsel prepared and/or drafted all or any
8 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
9 equally in the preparation and drafting of this Consent Judgment.

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

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

15 **16. ENFORCEMENT**

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

24 **17. ENTIRE AGREEMENT, AUTHORIZATION**

25 **17.1** This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, including any and
27 all prior discussions, negotiations, commitments, and understandings related thereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

5 18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
6 CONSENT JUDGMENT

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

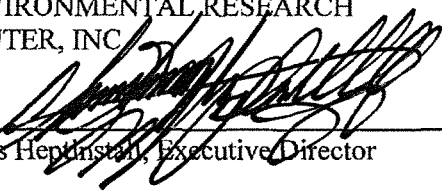
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

15 IT IS SO STIPULATED:

16
17 Dated: 12/14, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC

18
19 By: 
20 Chris Heptinstall, Executive Director

21 Dated: 12-13, 2021

BARE PERFORMANCE NUTRITION
LLC

22
23 Anthony Davis
24 By: Anthony M Davis
25 Its: General Counsel
26
27
28

1 **APPROVED AS TO FORM:**

2 Dated: December 14, 2021

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7 Dated: 12-13, 2021

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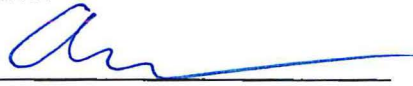
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ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
In-House Counsel

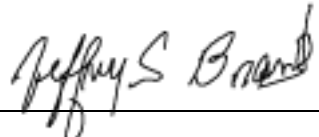
LAW OFFICE OF RACHEL EWING

By: 
Ramon Derek Brett Livingston
Attorney for Defendant Bare Performance
Nutrition LLC

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: 06/09/2022, 2021



Judge of the Superior Court
Jeffrey Brand / Judge

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EXHIBIT A



Environmental Research Center

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

April 13, 2021

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:

Bare Performance Nutrition LLC

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. BPN Bare Performance Nutrition G.1.M Sport Go One More Lemon Lime - Lead**
- 2. BPN Bare Performance Nutrition Vegan Protein Chocolate - Lead**
- 3. BPN Bare Performance Nutrition In-Focus Cognitive Enhancer Blue Snow Cone - Lead**
- 4. BPN Bare Performance Nutrition Strong Greens Superfood Greens Powder Pineapple Coconut - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 13, 2018, 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.

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 Bare Performance Nutrition LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Bare Performance Nutrition LLC

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 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: April 13, 2021

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On April 13, 2021, 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
Bare Performance Nutrition LLC
3161 Eagles Nest St, Unit 360
Round Rock, TX 78665

Nicholas Bare
(Registered Agent for Bare Performance Nutrition LLC)
2590 Oakmont Dr
Round Rock, TX 78665

On April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

April 13, 2021

Page 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

April 13, 2021

Page 6

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

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

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

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

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

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

On April 13, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 13, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San 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.

EXHIBIT B



Environmental Research Center

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

April 22, 2021

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:

Bare Performance Nutrition LLC

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. BPN Bare Performance Nutrition Strong Greens Superfood Greens Powder Lemon - Lead**
- 2. BPN Bare Performance Nutrition Strong Reds Superfood Reds Powder Strawberry - Lead**
- 3. BPN Bare Performance Nutrition In-Focus Cognitive Enhancer Raspberry Lemonade - Lead**

4. BPN Bare Performance Nutrition G.1.M Sport Go One More Fruit Punch – Lead

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 22, 2018, 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.

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 Bare Performance Nutrition LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Bare Performance Nutrition LLC

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 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: April 22, 2021

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On April 22, 2021, 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
Bare Performance Nutrition LLC
3161 Eagles Nest St, Unit 360
Round Rock, TX 78665

Nicholas Bare
(Registered Agent for Bare Performance Nutrition LLC)
2590 Oakmont Dr
Round Rock, TX 78665

On April 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

April 22, 2021

Page 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

April 22, 2021

Page 6

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

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

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

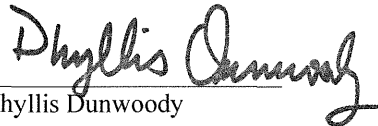
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On April 22, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 22, 2021, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San 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
Post Office Box 457
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.

EXHIBIT C



Environmental Research Center

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

July 29, 2021

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:

Bare Performance Nutrition LLC

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. **BPN Bare Performance Nutrition G.1.M Sport Go One More Lemon Lime – Mercury**
2. **BPN Bare Performance Nutrition Whey Protein Nutter Bar Blast - Mercury**
3. **BPN Bare Performance Nutrition Whey Protein Vanilla - Mercury**
4. **BPN Bare Performance Nutrition Whey Protein Fruity Cereal - Mercury**
5. **BPN Bare Performance Nutrition In-Focus Cognitive Enhancer Blue Snow Cone - Mercury**

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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 July 29, 2018, 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.

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 Bare Performance Nutrition LLC and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Bare Performance Nutrition LLC

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 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: July 29, 2021

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On July 29, 2021, 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
Bare Performance Nutrition LLC
3161 Eagles Nest St, Unit 360
Round Rock, TX 78665

Nicholas Bare
(Registered Agent for Bare Performance Nutrition LLC)
2590 Oakmont Dr
Round Rock, TX 78665

Anthony M. Davis, Esquire
General Counsel for Bare Performance Nutrition
1 Beacon Street, Suite 1500
Boston, MA 02108

On July 29, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On July 29, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

July 29, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

July 29, 2021

Page 6

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

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

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


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

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

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

On July 29, 2021, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on July 29, 2021, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

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

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

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

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

District Attorney, San
Bernardino County
303 West Third Street
San 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
PO Box 457
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.

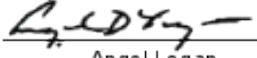
A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

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.

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 06/15/2022
PLAINTIFF/PETITIONER: Environmental Research Center, Inc.	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy Angel Logan
DEFENDANT/RESPONDENT: Bare Performance Nutrition LLC	
CERTIFICATE OF MAILING	CASE NUMBER: RG21103077

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

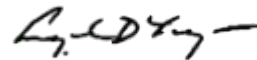
Charles Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North
Suite 400
San Diego, CA 92108-

Ramon Derek Brett Livingston
Law Offices of Rachel Ewing
901 Corporate Center Drive
Suite 580
Monterey Park, CA 91754-7695

Chad Finke, Executive Officer / Clerk of the Court

Dated: 06/15/2022

By:



Angel Logan, Deputy Clerk

CERTIFICATE OF MAILING