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7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

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

14 **Plaintiff,**

15 **vs.**

16 **LOVE BEETS USA, LLC; LOVE BEETS**
17 **PRODUCTION, LLC; G'S FRESH BEETS**
18 **PRODUCTION, INC.; G'S FRESH BEETS**
19 **INCORPORATED; G'S FRESH LTD; and**
20 **DOES 1-100**

21 **Defendants.**

22 **CASE NO. 23CV030683**

23 **NOTICE OF ENTRY OF JUDGMENT**

24 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

25 PLEASE TAKE NOTICE that the Court entered Judgment in the above-entitled matter. A true
26 and correct copy of the Judgment is attached hereto as Exhibit A.

27 Dated: August 8, 2023

28 WRAITH LAW



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

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EXHIBIT A

EXHIBIT A

EXHIBIT A

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08/07/2023

Clad Flake, Executive Officer / Clerk of the Court

By: Danielle Labrecque Deputy
D. Labrecque

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 7 Attorney for Plaintiff Environmental Research Center, Inc.

8 STUART R. SMITH, SBN 312284
 9 HARRIS BEACH PLLC
 10 726 Exchange Street, Suite 1000
 11 Buffalo, NY 14210
 12 Tel: (716) 200-5050
 13 Email: ssmith@harrisbeach.com
 14 Attorney for Defendants Love Beets USA, LLC, Love
 15 Beets Production, LLC, G's Fresh Beets Production, Inc.,
 16 G's Fresh Beets Incorporated, and G's Fresh Ltd

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

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

Plaintiff,

vs.

**LOVE BEETS USA, LLC; LOVE BEETS
PRODUCTION, LLC; G'S FRESH BEETS
PRODUCTION, INC.; G'S FRESH BEETS
INCORPORATED; G'S FRESH LTD; and
DOES 1-100**

Defendants.

CASE NO. 23CV030683

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 6, 2023

Trial Date: None set

1. INTRODUCTION

1.1 On April 6, 2023, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 ("Proposition 65"), against Love Beets USA, LLC, Love Beets Production, LLC, G's Fresh
4 Beets Production, Inc., G's Fresh Beets Incorporated, and G's Fresh Ltd (collectively "Love
5 Beets") and Does 1-100. In this action, ERC alleges that a number of products manufactured,
6 distributed, or sold by Love Beets contain lead, a chemical listed under Proposition 65 as a
7 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring
8 a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered
9 Product" or collectively as "Covered Products") are: (1) Love Beets 100% Pure Beetroot
10 Organic "Superfood" Powder and (2) Love Beets 100% Pure Beetroot "Superfood" Powder.

11 **1.2** ERC and Love Beets are hereinafter referred to individually as a "Party" or
12 collectively as the "Parties."

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Consent Judgment, the Parties agree that Love Beets is a
18 business entity that has employed ten or more persons at all times relevant to this action, and
19 qualifies as a "person in the course of doing business" within the meaning of Proposition 65. Love
20 Beets manufactures, distributes, and/or sells the Covered Products.

21 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
22 dated October 13, 2022 that was served on the California Attorney General, other public
23 enforcers, and Love Beets ("Notice"). A true and correct copy of the 60-Day Notice dated
24 October 13, 2022 is attached hereto as **Exhibit A** and is incorporated herein by reference.
25 More than 60 days have passed since the Notice was served on the Attorney General and
26 public enforcers, and no designated governmental entity has filed a Complaint against Love
27 Beets with regard to the Covered Products or the alleged violations.

28 **1.6** ERC's Notice and Complaint allege that use of the Covered Products by

1 California consumers exposes them to lead without first receiving clear and reasonable
2 warnings from Love Beets, which is in violation of California Health and Safety Code section
3 25249.6. Love Beets denies all material allegations contained in the Notice and Complaint.

4 **1.7** The Parties have entered into this Consent Judgment in order to settle,
5 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
6 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
7 or be construed as an admission by any of the Parties or by any of their respective officers,
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
9 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
10 issue of law, or violation of law.

11 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
13 any current or future legal proceeding unrelated to these proceedings.

14 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
15 as a Judgment by this Court.

16 **2. JURISDICTION AND VENUE**

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

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

25 **3.1** Beginning on the Effective Date, Love Beets shall be permanently enjoined
26 from manufacturing for sale in the State of California, "Distributing into the State of
27 California," or directly selling in the State of California, any Covered Product that exposes a
28 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it

1 meets the warning requirements under Section 3.2.

2 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
3 of California” shall mean to directly ship a Covered Product into California for sale in
4 California or to sell a Covered Product to a distributor that Love Beets knows or has reason to
5 know will sell the Covered Product in California.

6 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
7 Level” shall be measured in micrograms, and shall be calculated using the following formula:
8 micrograms of lead per gram of product, multiplied by grams of product per serving of the
9 product (using the largest serving size appearing on the product label), multiplied by servings
10 of the product per day (using the largest number of recommended daily servings appearing on
11 the label), which equals micrograms of lead exposure per day. If the label contains no
12 recommended daily servings, then the number of recommended daily servings shall be one.

13 **3.2 Clear and Reasonable Warnings**

14 If Love Beets is required to provide a warning pursuant to Section 3.1, the following
15 warning must be utilized (“Warning”):

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

19 Love Beets shall use the phrase “cancer and” in the Warning if Love Beets has reason to
20 believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined
21 pursuant to the quality control methodology set forth in Section 3.4 or if Love Beets has reason to
22 believe that another Proposition 65 chemical is present which may require a cancer warning.

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

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

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

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

14 3.3 Conforming Covered Products

15 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
16 Level" is no greater than 0.5 micrograms of lead 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 Love Beets to contain other chemicals that violate Proposition 65's
19 safe harbor thresholds.

20 3.4 Testing and Quality Control Methodology

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

1 that Covered Product. However, if during or after the three-year testing period, Love Beets
2 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
3 Covered Products, Love Beets shall test that Covered Product annually for at least two (2)
4 consecutive years after such change is made.

5 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest
6 lead detection result of the three (3) randomly selected samples of the Covered Products will
7 be controlling.

8 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
9 laboratory method that complies with the performance and quality control factors appropriate
10 for the method used, including limit of detection and limit of quantification, sensitivity,
11 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
12 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005
13 mg/kg.

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

18 3.4.5 Nothing in this Consent Judgment shall limit Love Beets' ability to
19 conduct, or require that others conduct, additional testing of the Covered Products, including
20 the raw materials used in their manufacture.

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

24 3.4.7 In the event that Love Beets ceases (a) manufacturing the Covered
25 Products for sale in California, (b) directly selling the Covered Products to consumers in
26 California, or (c) Distributing the Covered Products into the State of California (collectively
27 referred to in this paragraph as "California Activities"), the obligations set forth in this Section
28 3.4 shall cease and no longer be applicable to Love Beets. However, if, after ceasing the

1 California Activities, Love Beets resumes any of the California Activities, the testing and
2 reporting requirements of Section 3.4 of this Consent Judgment shall apply beginning within
3 one year after the date the California Activities were resumed, unless Love Beets can show to
4 the reasonable satisfaction of ERC that the resumption of the California Activities was a
5 temporary error that was resolved when discovered.

6 **4. SETTLEMENT PAYMENT**

7 **4.1** In full satisfaction of all potential civil penalties, additional settlement
8 payments, attorney's fees, and costs, Love Beets shall make a total payment of \$ 20,000.00
9 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Love
10 Beets shall make this payment by wire transfer to ERC's account, for which ERC will give
11 Love Beets the necessary account information. The Total Settlement Amount shall be
12 apportioned as follows:

13 **4.2** \$1,000.00 shall be considered a civil penalty pursuant to California Health and
14 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$750.00) of the civil penalty to the
15 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
16 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
17 Code section 25249.12(c). ERC will retain the remaining 25% (\$250.00) of the civil penalty.

18 **4.3** \$847.04 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **4.4** \$6,160.00 shall be distributed to Wraith Law as reimbursement of ERC's
21 attorney's fees, while \$11,992.96 shall be distributed to ERC for its in-house legal fees. Except
22 as explicitly provided herein, each Party shall bear its own fees and costs.

23 **4.5** In the event that Love Beets fails to remit the Total Settlement Amount owed
24 under Section 4 of this Consent Judgment on or before the Due Date, Love Beets shall be
25 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
26 provide written notice of the delinquency to Love Beets via electronic mail. If Love Beets fails
27 to deliver the Total Settlement Amount within five (5) days from the written notice, the Total
28 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the

1 California Code of Civil Procedure section 685.010. Additionally, Love Beets 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 Love Beets seeks to modify this Consent Judgment under Section 5.1, then
10 Love Beets must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
11 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
12 provide written notice to Love Beets within thirty (30) days of receiving the Notice of Intent.
13 If ERC notifies Love Beets in a timely manner of ERC's intent to meet and confer, then the
14 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
15 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
16 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
17 ERC shall provide to Love Beets a written basis for its position. The Parties shall continue to
18 meet and confer for an additional thirty (30) days in an effort to resolve any remaining
19 disputes. Should it become necessary, the Parties may agree in writing to different deadlines
20 for the meet-and-confer period.

21 **5.3** In the event that Love Beets initiates or otherwise requests a modification under
22 Section 5.1, and the meet and confer process leads to a joint motion or application for a
23 modification of the Consent Judgment, Love Beets shall reimburse ERC its costs and
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
25 arguing the motion or application.

26 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
27 **JUDGMENT**

28 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or

1 terminate this Consent Judgment.

2 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
3 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
4 inform Love Beets in a reasonably prompt manner of its test results, including information
5 sufficient to permit Love Beets to identify the Covered Products at issue. Love Beets shall,
6 within thirty (30) days following such notice, provide ERC with testing information, from an
7 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
8 demonstrating Love Beets' compliance with the Consent Judgment. The Parties shall first
9 attempt to resolve the matter prior to ERC taking any further legal action.

10 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

19 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
20 on behalf of itself and in the public interest, and Love Beets and its respective officers,
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
22 franchisees, licensees, customers (not including private label customers of Love Beets),
23 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
24 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
25 of them (collectively, "Released Parties").

26 **8.2** ERC, acting in the public interest, releases the Released Parties from any
27 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
28 to lead from the Covered Products as set forth in the Notice of Violation. ERC, on behalf of

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

7 **8.3** ERC on its own behalf only, and Love Beets on its own behalf only, further
8 waive and release any and all claims they may have against each other for all actions or
9 statements made or undertaken in the course of seeking or opposing enforcement of
10 Proposition 65 in connection with the Notice and Complaint up through and including the
11 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
12 right to seek to enforce the terms of this Consent Judgment.

13 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
14 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
15 discovered. ERC on behalf of itself only, and Love Beets on behalf of itself only, acknowledge
16 that this Consent Judgment is expressly intended to cover and include all such claims up
17 through and including the Effective Date, including all rights of action therefore. ERC and
18 Love Beets acknowledge that the claims released in Sections 8.2 and 8.3 above may include
19 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
20 unknown claims. California Civil Code section 1542 reads as follows:

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

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

28 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to

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

3 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
4 environmental exposures arising under Proposition 65, nor shall it apply to any of Love Beets'
5 products other than the Covered Products.

6 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

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

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

23 With a copy to:
24 WILLIAM F. WRAITH
25 WRAITH LAW
26 25361 Commercentre Drive, Ste 150
27 Lake Forest, CA 92630
28 Tel: (949) 452-1234
Email: bill@wraithlaw.com

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1 **FOR LOVE BEETS USA, LLC; LOVE BEETS PRODUCTION, LLC; G'S FRESH**
2 **BEETS PRODUCTION, INC.; G'S FRESH BEETS INCORPORATED; G'S FRESH**
3 **LTD:**

3 Leanne Khoury, Managing Director
4 Love Beets Productions LLC
5 1150 Lee Road, Section A
6 Rochester, New York 14606
7 Tel: (716) 430-0626
8 Email: Leanne.Khoury@lovebeetsusa.com

8 With a copy to:

9 PATRICK J. DALTON
10 HARRIS BEACH PLLC
11 99 Garnsey Rd
12 Pittsford, NY 14534
13 Tel: (585) 419-8800
14 Email: pdalton@harrisbeach.com

13 **12. COURT APPROVAL**

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

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

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

22 **13. EXECUTION AND COUNTERPARTS**

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

26 **14. DRAFTING**

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

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

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

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

12 **16. ENFORCEMENT**

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

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

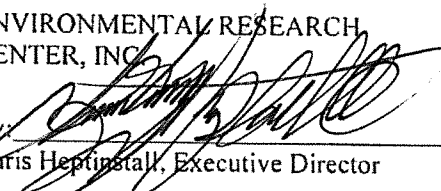
10 (2) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

12 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
13 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

14 **IT IS SO STIPULATED:**

15 Dated: 4/27/, 2023

ENVIRONMENTAL RESEARCH
CENTER, INC.

16
17 By: 
18 Chris Heptinstall, Executive Director

19 Dated: April 25, 2023

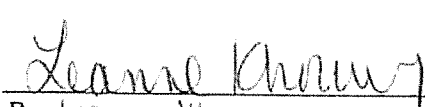
LOVE BEETS USA, LLC

David Marrero

20
21 By: David Marrero
22 Its: CFO

23 Dated: 4/26, 2023

LOVE BEETS PRODUCTION, LLC

24
25 
26 By: Leanne Khoury
27 Its: Managing Director
28

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Dated: 4/26, 2023

G'S FRESH BEETS PRODUCTION, INC.

By: Leanne Murray
Its: MD

Dated: 4/26, 2023

G'S FRESH BEETS INCORPORATED

By: Leanne Murray
Its: MD

Dated: 4/26, 2023

G'S FRESH LTD

By: Leanne Murray
Its: MD

APPROVED AS TO FORM:

Dated: April 28, 2023

WRAITH LAW

By: William F. Wraith
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

Dated: 4/26, 2023

HARRIS BEACH PLLC

By: Stuart R. Smith
Stuart R. Smith
Attorney for Love Beets USA, LLC, Love
Beets Production, LLC, G's Fresh Beets
Production, Inc., G's Fresh Beets
Incorporated, and G's Fresh Ltd

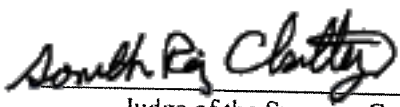
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 07-11, 2023



Judge of the Superior Court

Somnath Raj Chatterjee / Judge

EXHIBIT A

WRAITH LAW

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

October 13, 2022

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

Love Beets USA, LLC
Love Beets Production, LLC
G's Fresh Beets Production, Inc.
G's Fresh Beets Incorporated
G's Fresh Ltd

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. Love Beets 100% Pure Beetroot Organic "Superfood" Powder – Lead**
- 2. Love Beets 100% Pure Beetroot "Superfood" Powder – Lead**

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

October 13, 2022

Page 2

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 13, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Love Beets USA, LLC, Love Beets Production, LLC, G's Fresh Beets Production, Inc., G's Fresh Beets Incorporated, and G's Fresh Ltd and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Love Beets USA, LLC, Love Beets Production, LLC, G’s Fresh Beets Production, Inc., G’s Fresh Beets Incorporated, and G’s Fresh Ltd

I, William F. Wraith, declare:

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

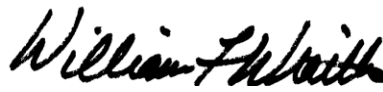
2. I am an attorney for the noticing party.

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

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

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

Dated: October 13, 2022



William F. Wraith

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On October 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Love Beets USA, LLC, Love Beets Production,
LLC, G’s Fresh Beets Production, Inc.,
G’s Fresh Beets Incorporated
3 Bala Plaza West, Ste 116
Bala Cynwyd, PA 19004

ATA Corporate Services, LLC
(Registered Agent for Love Beets
USA, LLC)
1201 N. Market St, Ste 2300
Wilmington, DE 19801

Current President or CEO
Love Beets USA, LLC, Love Beets Production,
LLC, G’s Fresh Beets Production, Inc.,
G’s Fresh Beets Incorporated
55 SE 2nd Ave, Ste 405
Delray Beach, FL 33444

The LLC
(Registered Agent for Love Beets
Production, LLC)
2300 Buffalo Rd, Bldg 200
Rochester, NY 14624

Current President or CEO
Love Beets USA, LLC, Love Beets Production,
LLC, G’s Fresh Beets Production, Inc.,
G’s Fresh Beets Incorporated
1150 Lee Road
Rochester, NY 14606

ATA Corporate Services, LLC
(Registered Agent for G’s Fresh Beets
Production, Inc.)
1201 N. Market St, Ste 2300
Wilmington, DE 19801

Current President or CEO
G’s Fresh Ltd.
Barway Rd
Soham
Ely
CB7 5TZ
United Kingdom

Corporate Creations Network Inc.
(Registered Agent for Love Beets
USA, LLC)
505 W Riverside Ave, Ste 500
Spokane, WA 99201

Paracorp Incorporated
(Registered Agent for Love Beets
Production, LLC)
2140 S Dupont Hwy
Camden, DE 19934

CT Corporation
(Registered Agent for G’s Fresh Beets
Incorporated)
820 Bear Tavern Rd
Ewing, NJ 08628

On October 13, 2022, 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> :

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

October 13, 2022

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

On October 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

Allison Haley, District Attorney
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Napa, CA 94559
CEPD@countyofnapa.org

Stacey Grassini, Deputy District Attorney
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Martinez, CA 94553
sgrassini@contracostada.org

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

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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@da.ocgov.com

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mlatimer@co.lassen.ca.us

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davidhollister@countyofplumas.com

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mcda@mariposacounty.org

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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

October 13, 2022

Page 6

Summer Stephan, District Attorney
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Alexandra.grayner@sfgov.org

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San Francisco, CA 94102
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DAConsumer.Environmental@sjcda.org

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San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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EPU@da.sccgov.org

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San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

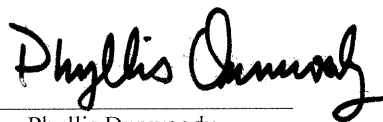
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On October 13, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 13, 2022, 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
310 6th St
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, 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 Tempe 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, 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
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2nd Floor
Downieville, CA 95936

District Attorney,
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Yreka, CA 96097

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4500
Fairfield, CA 94533

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832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
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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

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: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	FILED Superior Court of California County of Alameda 08/07/2023
PLAINTIFF/PETITIONER: Environmental Research Center, Inc.	Chad Finke, Executive Officer / Clerk of the Court By: <u><i>Danielle Labrecque</i></u> Deputy
DEFENDANT/RESPONDENT: Love Beets USA, LLC et al	D. Labrecque
CERTIFICATE OF MAILING	CASE NUMBER: 23CV030683

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 attached document 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 Hayward, 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.

Stuart Smith
Harris Beach
726 Exchange Street 1000
Buffalo, NY 14210

William Wraith
Wraith Law
25361 Commercentre Drive, Suite 150
Lake Forest, CA 92630

Chad Finke, Executive Officer / Clerk of the Court

Dated: 08/07/2023

By:

Danielle Labrecque

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING

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

4
5 On August 8, 2023, I served the foregoing documents described as:

6 NOTICE OF ENTRY OF JUDGMENT

7 On the following interested person(s) designated below:

8 Stuart R. Smith
9 Harris Beach PLLC
10 726 Exchange Street, Suite 1000
11 Buffalo, NY 14210
12 Email: ssmith@harrisbeach.com
13 Attorney for Defendants

14 **BY E-SERVICE:** I electronically served such document on the addressees at the
15 electronic service address listed above by One Legal, an electronic service provider.

16 I declare under penalty of perjury under the laws of the State of California that the above is true
17 and correct. Executed on **August 8, 2023** at Lake Forest, California.

18 

19 _____
20 William F. Wraith
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