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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **COUNTY OF ALAMEDA**

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

Plaintiff,

vs.

KOS NATURALS, LLC; KOS, INC;
EXCELSIOR NUTRITION INC,
individually and dba 4EXCELSIOR; and
DOES 1-100

Defendants.

CASE NO. RG20075140

AMENDED ~~PROPOSED~~
STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 28, 2020
Trial Date: March 8, 2027

(Includes Consolidated Cases filed under
Case Numbers 24CV069852,
24CV070738, and 24CV070740)

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1 **1. INTRODUCTION**

2 **1.1** On September 28, 2020, Plaintiff Environmental Research Center, Inc.
3 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this
4 action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant
5 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
6 65”), against KOS Naturals, LLC and Otimo, LLC, individually and dba KOS Naturals and
7 Does 1-100. A First Amended Complaint was filed against the same defendants on October 19,
8 2020, and on June 2, 2021, a Second Amended Complaint was filed. On February 7, 2023,
9 ERC filed a Third Amended Complaint, adding KOS, Inc. as a defendant, and ERC thereafter
10 filed its Fourth Amended Complaint on July 28, 2023. On March 24, 2025, ERC filed a Fifth
11 Amended Complaint, adding Excelsior Nutrition Inc., individually and dba 4Excelsior
12 (“4Excelsior”), as a defendant. The Fifth Amended Complaint is the operative Complaint and
13 is hereinafter referred to as “Complaint.”

14 **1.2** On April 2, 2024, ERC, as a private enforcer and in the public interest, filed a
15 Complaint for Injunctive and Declaratory Relief and Civil Penalties in the Alameda County
16 Superior Court pursuant to the provisions of Proposition 65 against Target Brands, Inc., Target
17 Corporation, and Does 1-100 (“Target Case”). The Case Number for the Target Case is
18 24CV069852.

19 **1.3** On April 8, 2024, ERC, as a private enforcer and in the public interest, filed a
20 Complaint for Injunctive and Declaratory Relief and Civil Penalties in the Alameda County
21 Superior Court pursuant to the provisions of Proposition 65 against CVS Pharmacy, Inc., CVS
22 Health Corporation, and Does 1-100 (“CVS Case”). The Case Number for the CVS Case is
23 24CV070740.

24 **1.4** On April 8, 2024, ERC, as a private enforcer and in the public interest, filed a
25 Complaint for Injunctive and Declaratory Relief and Civil Penalties in the Alameda County
26 Superior Court pursuant to the provisions of Proposition 65 against Vitacost.com, Inc. and
27 Does 1-100 (“Vitacost Case”). The Case Number for the Vitacost Case is 24CV070738.

28 **1.5** The Target Case, CVS Case, and Vitacost Case may hereinafter be referred to

1 collectively as the “Retailer Cases.” On January 6, 2025, Judge Somnath Raj Chatterjee, in
2 Department 21 of the Alameda County Superior Court, issued an Order consolidating the
3 Retailer Cases with the original case filed under Case Number RG20075140 and designating
4 Case Number RG20075140 as the lead case (which may also be referred to as the “4Excelsior
5 Case”).

6 **1.6 Products At Issue**

7 **1.6.1** In the Complaint, ERC alleges that a number of products manufactured,
8 distributed, or sold by 4Excelsior contain lead and/or mercury and/or cadmium, chemicals listed
9 under Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these
10 chemicals at a level requiring a Proposition 65 warning. 4Excelsior disputes these allegations and
11 expressly denies that any Covered Product required a warning under Proposition 65. The
12 products at issue in the Complaint (referred to hereinafter individually as a “Covered Product” or
13 collectively as “Covered Products”) are: (1) KOS Nature-Powered Organic Spirulina Powder
14 (lead), (2) *KOS Nature-Powered Organic Fo-Ti Powder (lead), (3) *KOS Nature-Powered
15 Organic Plant Protein Chocolate Chip Mint Flavor (lead, cadmium), (4) KOS Nature-Powered
16 Organic Maca Root Powder (lead), (5) KOS Nature-Powered Organic Greens Blend (lead), (6)
17 KOS Nature-Powered Show Me The Greens! Green Apple Sorbet Flavored (lead), (7) *KOS
18 Nature-Powered Organic Flax Seed Powder (lead), (8) *KOS Nature-Powered Organic Chlorella
19 Powder (lead), (9) KOS Nature-Powered Organic Ashwagandha Powder (lead), (10) *KOS
20 Nature-Powered Organic Rhodiola Root Powder (lead), (11) *KOS Nature-Powered Organic
21 Matcha Powder (lead), (12) KOS Nature-Powered Organic Plant Protein Chocolate Peanut
22 Butter Flavor (lead, cadmium), (13) *KOS Nature-Powered Organic Cinnamon Bark Powder
23 (lead), (14) KOS Nature-Powered Organic Plant Protein Vanilla Flavor (lead), (15) KOS Nature-
24 Powered Organic Plant Protein Chocolate Flavor (lead, cadmium), (16) KOS Nature-Powered
25 Organic Plant Protein Salted Caramel Coffee Flavor (lead), (17) KOS Nature-Powered Organic
26 Plant Protein with Blue Spirulina & Immunity Blend Blueberry Muffin Flavor (lead), (18) KOS
27 Nature-Powered Kiss Your Blues Away Berry Coconut Cooler Flavored (lead), (19) *KOS
28 Nature-Powered Holy Cacao! Cinnamon Cocoa Flavored (lead), (20) *KOS Nature-Powered At

1 Ease, Soldier! (lead), (21) *KOS Nature-Powered Rhodiola Root (lead), (22) *KOS Nature-
2 Powered Matcha Tea (lead), (23) KOS Nature-Powered A Whole Latte Gold Golden Mylk Blend
3 Gingerbread Chai Flavored (lead, mercury), (24) KOS Nature-Powered Sippin' On Shroomboom
4 Mushroom Coffee Blend Dark Chocolate Mocha Flavored (lead) (25) *KOS Nature-Powered
5 Immune Defense With EpiCor (lead), and (26) *KOS Nature-Powered Organic Plant Protein
6 Vanilla Bavarian Cream Flavored (mercury). The Covered Products that are marked with an
7 asterisk (“*”) in the preceding list of Covered Products are not currently being manufactured,
8 marketed, distributed, or sold by or for 4Excelsior. In the event any such product is reintroduced
9 in the future, it shall remain a Covered Product under this Consent Judgment and be subject to
10 the release and the injunctive terms herein.

11 **1.6.2** In the Target Case, ERC alleges that two products distributed and/or sold
12 by Target contain lead, a chemical listed under Proposition 65 as a carcinogen and/or
13 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
14 warning. These products (which are included in the Consent Judgment as Covered Products
15 pursuant to Section 1.6.1) are: (1) KOS Nature-Powered Organic Superfood Plant Protein
16 Powder Chocolate Flavored and (2) KOS Nature-Powered Organic Superfood Plant Protein
17 Powder with Blue Spirulina Blueberry Muffin Flavored.

18 **1.6.3** In the Vitacost Case, ERC alleges that six products distributed and/or sold
19 by Vitacost contain lead, a chemical listed under Proposition 65 as a carcinogen and/or
20 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
21 warning. These products (which are included in the Consent Judgment as Covered Products
22 pursuant to Section 1.6.1) are: (1) KOS Nature-Powered Organic Superfood Plant Protein
23 Powder Chocolate Flavored, (2) KOS Nature-Powered Organic Superfood Plant Protein Powder
24 Vanilla Flavored, (3) KOS Nature-Powered Organic Superfood Plant Protein Powder Salted
25 Caramel Coffee Flavored, (4) KOS Nature-Powered Organic Superfood Plant Protein Powder
26 Unflavored & Unsweetened, (5) KOS Nature-Powered Organic Superfood Plant Protein Powder
27 Blueberry Muffin Flavored, and (6) KOS Nature-Powered Organic Superfood Plant Protein
28 Powder Chocolate Peanut Butter Flavored.

1 **1.6.4** In the CVS Case, ERC alleges that two products distributed and/or sold by
2 CVS contain lead, a chemical listed under Proposition 65 as a carcinogen and/or reproductive
3 toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning.
4 These products (which are included in the Consent Judgment as Covered Products pursuant to
5 Section 1.6.1) are: (1) KOS Nature-Powered Organic Plant Protein Chocolate Flavored and (2)
6 KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavored.

7 **1.7** Each of the Covered Products may also be referred to as “Lead Covered
8 Product(s).” Product numbers (3), (12), and (15) may also be referred to as the “Cadmium
9 Covered Product(s).” Product numbers (23) and (26) may also be referred to as the “Mercury
10 Covered Product(s).”

11 **1.8 Parties To The Consent Judgment**

12 **1.8.1** ERC, 4Excelsior, Target Brands, Inc. and Target Corporation (together
13 referred to as “Target”), Vitacost.com, Inc. (“Vitacost”), and CVS Pharmacy, Inc. and CVS
14 Health Corporation (together referred to as “CVS”) may also hereinafter be referred to
15 individually as a “Party” or collectively as the “Parties.”

16 **1.8.2** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among
17 other causes, helping safeguard the public from health hazards by reducing the use and misuse of
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
19 and encouraging corporate responsibility.

20 **1.8.3** For purposes of this Amended [Proposed] Stipulated Consent Judgment
21 (“Consent Judgment”), the Parties agree that 4Excelsior is a business entity that has employed
22 ten or more persons at all times relevant to this action and qualifies as a “person in the course of
23 doing business” within the meaning of Proposition 65. 4Excelsior manufactures, markets,
24 distributes, and/or sells the Covered Products.

25 **1.9 Notices of Violation**

26 **1.9.1** The Complaint is based, in part, on allegations contained in ERC’s
27 Notices of Violation dated October 15, 2024 that were served on the California Attorney
28 General, other public enforcers, and 4Excelsior (“Notices”). True and correct copies of the 60-

1 Day Notices dated October 15, 2024 are attached collectively hereto as **Exhibit A** and are
2 incorporated herein by reference. More than 60 days have passed since the Notices were served
3 on the Attorney General, public enforcers, and 4Excelsior and no designated governmental entity
4 has filed a Complaint against 4Excelsior with regard to the Covered Products or the alleged
5 violations.

6 **1.9.2** The Target Case is based, in part, on allegations contained in ERC’s
7 Notices of Violation dated January 5, 2024 and January 19, 2024, which are attached collectively
8 hereto as **Exhibit B** and are incorporated herein by reference.

9 **1.9.3** The Vitacost Case is based, in part, on allegations contained in ERC’s
10 Notice of Violation dated January 26, 2024, which is attached hereto as **Exhibit C** and is
11 incorporated herein by reference.

12 **1.9.4** The CVS Case is based, in part, on allegations contained in ERC’s Notice
13 of Violation dated December 14, 2023, which is attached hereto as **Exhibit D** and is incorporated
14 herein by reference.

15 **1.10** ERC’s Notices and the Complaint allege that use of the Covered Products by
16 California consumers exposes them to lead and/or mercury and/or cadmium without first
17 receiving clear and reasonable warnings from 4Excelsior, which is in violation of California
18 Health and Safety Code section 25249.6. 4Excelsior denies all material allegations contained in
19 the Notices and Complaint.

20 **1.11** The Notices of Violation and the complaints at issue in the Target Case, the
21 Vitacost Case, and the CVS Case each allege that use of the Covered Products by California
22 consumers exposes them to lead without first receiving clear and reasonable warnings from
23 Target, Vitacost, or CVS, as applicable, which is in violation of California Health and Safety
24 Code section 25249.6. Target, Vitacost, and CVS each deny all material allegations made against
25 them in the Target Case, the Vitacost Case, or the CVS Case.

26 **1.12** The Parties have entered into this Consent Judgment in order to settle,
27 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
28 Compliance with this Consent Judgment shall not constitute or be construed as an admission

1 by any of the Parties or by any of their respective officers, directors, shareholders, employees,
2 agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
3 distributors, wholesalers, or retailers of any fact, issue of law, or violation of law. This Consent
4 Judgment is entered into solely for purposes of resolving the disputed allegations of the
5 Notices, the Complaint, the Target Case, the Vitacost Case, and the CVS Case, and shall not be
6 admissible in any other proceeding, unrelated to this case, as evidence of liability, fault,
7 wrongdoing, or concession by 4Excelsior, Target, CVS, or Vitacost.

8 **1.13** Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
10 any current or future legal proceeding unrelated to these proceedings. The Parties expressly
11 reserve all rights not expressly waived herein.

12 **1.14** The Effective Date of this Consent Judgment is the date on which it is entered
13 as a Judgment by this Court.

14 **1.15 Bar Against Future Claims.** ERC, acting solely on its own behalf and not in the
15 public interest, represents and agrees that neither it nor any of its officers, directors, agents,
16 employees, assigns, or successors will initiate, support, or encourage any additional enforcement
17 action against any Released Party as defined in this Consent Judgment, including but not limited
18 to 4Excelsior, Target, Vitacost, or CVS under Proposition 65 based on alleged exposures to the
19 Covered Products occurring prior to the Effective Date. Nothing in this Section 1.12 shall
20 prohibit ERC, including its officers, directors, agents, employees, assigns, or successors, from
21 future enforcement of this Consent Judgment, including but not limited to enforcement relating
22 to future violations of Proposition 65 with respect to the Covered Products, against 4Excelsior.

23 **1.16 Authority to Bind.** Each signatory to this Consent Judgment represents and
24 warrants that they are authorized to execute this agreement and to bind the entity or entities on
25 whose behalf they sign.

26 **1.17 Motion to Seal.** In the event any party to this Consent Judgment seeks to file any
27 materials related to this Consent Judgment (but not including the Consent Judgment) under seal,
28 ERC agrees that it will not oppose or object to such a motion to seal. The Parties acknowledge

1 that the Office of the California Attorney General requires submission of the final Consent
2 Judgment for public posting; however, nothing herein shall prevent 4Excelsior from seeking a
3 protective order or other relief to maintain confidentiality over specific materials or information
4 submitted to the Court, but not including this Consent Judgment, in connection with this matter.
5 Each Party shall bear its own costs and attorneys' fees associated with any such motion.

6 **2. JURISDICTION AND VENUE**

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

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

16 **3.1** Beginning on the Effective Date, 4Excelsior shall be permanently enjoined from
17 manufacturing for sale in the State of California, "Distributing into the State of California," or
18 directly selling in the State of California, (a) any Lead Covered Product that exposes a person
19 to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day (the current
20 Maximum Allowable Dose Level ("MADL") for lead as established by Office of
21 Environmental Health Hazard Assessment ("OEHHA")) and/or (b) any Mercury Covered
22 Product that exposes a person to a "Daily Mercury Exposure Level" of more than 0.3
23 micrograms of mercury per day and/or (c) any Cadmium Covered Product that exposes a
24 person to a "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per
25 day, all pursuant to the testing methodologies and levels of quantification set forth in Section 3
26 unless such Covered Product meets the warning requirements under Section 3.2. In the event
27 OEHHA establishes an MADL for lead that is different from the current MADL of 0.5
28 micrograms of lead per day, and that is applicable to the Lead Covered Products, 4Excelsior

1 shall be entitled seek a modification of this Consent Judgment pursuant to Section 5, and such
2 modification shall not be unreasonably withheld by ERC. Likewise, in the event OEHHA
3 establishes an MADL for mercury that is different from the Daily Mercury Exposure Level of
4 0.3 micrograms of mercury per day, and that is applicable to the Mercury Covered Products,
5 4Excelsior shall be entitled seek a modification of this Consent Judgment pursuant to Section
6 5, and such modification shall not be unreasonably withheld by ERC.

7 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
8 of California” shall mean to directly ship a Covered Product into California for sale in
9 California or to sell a Covered Product to a distributor that 4Excelsior knows or has reason to
10 know will sell the Covered Product in California. Additionally, as used in this Consent
11 Judgment, the term MADL (Maximum Allowable Dose Level) shall mean the daily exposure
12 to a listed reproductive toxicant that is at or below a level requiring no Proposition 65
13 reproductive-harm warning.

14 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of recommended daily servings appearing on
19 the label), which equals micrograms of lead exposure per day. If the label contains no
20 recommended daily servings, then the number of recommended daily servings shall be one.
21 Nothing herein shall require testing of any product not manufactured or sold in California after
22 the Effective Date.

23 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
24 Level” shall be measured in micrograms, and shall be calculated using the following formula:
25 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
26 product (using the largest serving size appearing on the product label), multiplied by servings
27 of the product per day (using the largest number of recommended daily servings appearing on
28 the label), which equals micrograms of mercury exposure per day. If the label contains no

1 recommended daily servings, then the number of recommended daily servings shall be one.
2 Nothing herein shall require testing of any Covered Product not manufactured or sold in
3 California after the Effective Date.

4 **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:
6 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
7 the product (using the largest serving size appearing on the product label), multiplied by
8 servings of the product per day (using the largest number of recommended daily servings
9 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
10 contains no recommended daily servings, then the number of recommended daily servings
11 shall be one. Nothing herein shall require testing of any Covered Product not manufactured or
12 sold in California after the Effective Date.

13 **3.2 Clear and Reasonable Warnings**

14 **3.2.1 Warning Requirements**

15 If 4Excelsior is required to provide a warning pursuant to Section 3.1, one of the following
16 warnings must be utilized (“Warning”):

17 **OPTION 1:**

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

21 OR

22 **OPTION 2:**

23  **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

24 OR

25 **OPTION 3:**

26 **WARNING:** Risk of [cancer from exposure to [lead] and] reproductive harm from exposure
27 to [lead] [cadmium] [mercury]. See www.P65Warnings.ca.gov/food.
28

1 OR

2 **OPTION 4:**

3 **WARNING:** Can expose you to [[lead] a carcinogen and] [lead] [cadmium] [mercury] a
4 reproductive toxicant. See www.P65Warnings.ca.gov/food.

5
6 The Warning shall begin with the word “**WARNING**” in all capital letters and bold print
7 as required by 27 CCR § 25607.2(a)(1) (2025). Use of “**CA WARNING**” or “**CALIFORNIA**
8 **WARNING**” in all capital letters and bold print in place of the word “**WARNING**” is optional
9 and not mandatory. 4Excelsior shall use the phrase “cancer and” in the Option 1 and Option 2
10 Warnings or “cancer from exposure to [lead] and” in the Option 3 Warning or “[lead] a
11 carcinogen and” in the Option 4 Warning (each phrase referred to individually as a “Cancer
12 Phrase”) only if it knows that the “Daily Lead Exposure Level” is greater than 15 micrograms of
13 lead as determined pursuant to the quality control methodology set forth in Section 3.4, or if it
14 knows that another Proposition 65 chemical is present at a level that requires a cancer warning.
15 As identified in the brackets, the warning shall appropriately reflect whether there is lead (for the
16 Lead Covered Products), cadmium (for the Cadmium Covered Products only), or mercury (for the
17 Mercury Covered Products only), but if there is a chemical present at a level that requires a cancer
18 warning, the chemical requiring use of the Cancer Phrase in the Warning shall always be
19 identified. For avoidance of doubt, mere analytical detection of a listed carcinogen at or above the
20 method LOQ/MDL, without an exposure exceedance as referenced above, shall not trigger
21 inclusion of the Cancer Phrase.

22 The Option 2 Warning may only be used until January 1, 2028. Any Covered Product that is
23 manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of
24 when the product is sold to a consumer. For the Option 2 Warning, a symbol consisting of a black
25 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left
26 of the text of the Warning, in a size no smaller than the height of the word “**WARNING.**” Where
27 the sign, label or shelf tag for the Covered Product is not printed using the color yellow, the symbol
28 may be printed in black and white.

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

4 Except as may be outlined in this Consent Judgment, which defines and controls the duties
5 to warn, in no event shall 4Excelsior be required to implement a Warning system that exceeds then
6 current “safe harbor” regulations under Proposition 65. Any final modifications to applicable law or
7 regulations applicable to the Covered Products and this Consent Judgment shall be applied on a
8 prospective basis only, and 4Excelsior reserves the right to seek modification of this Consent
9 Judgment pursuant to Section 5 in order to conform its labeling and internet warnings according to
10 any such final modification.

11 **3.2.2 Compliance by Providing the Warning on the Product Label**

12 The Warning shall be securely affixed to or printed upon the label of each Covered
13 Product manufactured or labeled by 4Excelsior, and it must be clearly visible and set off from
14 surrounding information in a manner that reasonably draws the consumer’s attention and enclosed
15 in a box.

16 The Warning shall be at least the same size as the largest of any other health or safety
17 warnings also appearing on the website or on the label and in no event less than six (6) point type.
18 No statements intended to or likely to have the effect of diminishing the impact of the Warning on
19 the average lay person shall accompany the Warning. Further no statements may accompany the
20 Warning that state or imply that the source of the listed chemical has an impact on or results in a
21 less harmful effect of the listed chemical.

22 4Excelsior must display the above Warning with such conspicuousness, as compared with
23 other words, statements or designs on the label, or on its website, if applicable, to render the
24 Warning likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use of the product. Where a sign or label used to provide the Warning for a Covered
26 Product includes consumer information about the Covered Product in a language other than English,
27 the Warning must also be provided in that language in addition to English.

28 ///

1 **3.2.3 Compliance by Providing the Warning to a Proposition 65 Reseller**

2 In lieu of providing the Warning on the label of the Covered Product pursuant to Section
3 3.2.2, 4Excelsior may comply with its warning obligation by providing a written notice directly to
4 (a) the authorized agent for the business to which 4Excelsior is selling or transferring the Covered
5 Product or (b) the authorized agent for a retail seller, so long as the business to which 4Excelsior is
6 providing the notice is a “person in the course of doing business” pursuant to Health and Safety
7 Code § 25249.11(b) (2025) and subject to Health and Safety Code § 25249.6 (2025). The business
8 to which 4Excelsior provides the notice, pursuant to (a) or (b) of this paragraph, shall hereafter be
9 referred to as “Proposition 65 Reseller.”¹ If a Proposition 65 Reseller has not designated an
10 authorized agent, 4Excelsior may serve the notice on the legal agent for service of process for the
11 Proposition 65 Reseller. The written notice shall:

- 12 (1) State that the Covered Product may result in an exposure to one or more listed
13 chemicals and provide the name of such chemical(s);
- 14 (2) Include the exact name or description of the Covered Product or specific identifying
15 information for the Covered Product such as a Universal Product Code or other
16 identifying designation;
- 17 (3) Include all necessary warning materials, such as labels, labeling, shelf signs or tags,
18 that are in compliance with the warning requirements of this Consent Judgment and
19 the warning language required by this Consent Judgment for Covered Products sold
20 on the internet; and
- 21 (4) Be renewed annually during the period in which the Covered Product is sold in
22 California by the Proposition 65 Reseller.

23 If 4Excelsior is complying with Proposition 65 pursuant to this Section 3.2.3 by providing
24 a written notice to a Proposition 65 Reseller, either by providing the written notice to the
25 authorized agent for the Proposition 65 Reseller or to the legal agent for service of process for the
26 _____

27 ¹ The term Proposition 65 Reseller shall include Target, Vitacost, and CVS, all of whom shall be
28 obligated and agree to provide a Warning for applicable Covered Products in accordance with
the provisions of Section 3.2.3 only if, and to the extent that, 4Excelsior provides each such
retailer with written notice in compliance with Section 3.2.3.

1 Proposition 65 Reseller, confirmation of receipt of the notice and any renewed notices must be
2 received electronically or in writing from the authorized agent or legal agent for service of process
3 to which 4Excelsior sent the notice. If 4Excelsior is unable to obtain such confirmation of receipt,
4 4Excelsior cannot rely on this Section 3.2.3 or 27 CCR § 25600.2 in lieu of providing the
5 Warning on the label of the Covered Products.

6 The Proposition 65 Reseller shall be responsible for the placement and maintenance of
7 warning materials, including Warnings for Covered Products sold over the internet, that the
8 Proposition 65 Reseller receives pursuant to this Section 3.2.3. Other than as required by this
9 Section 3.2.3, in no event shall 4Excelsior be obligated to advise, instruct, interpret, or otherwise
10 explain the content, form, or method of providing the Warning to any Proposition 65 Reseller.
11 Each such Proposition 65 Reseller remains independently responsible for its own compliance with
12 Proposition 65 and related regulations.

13 **3.2.4 Compliance by Providing the Warning on the Internet**

14 For any Covered Product sold by 4Excelsior over the internet to consumers in California,
15 the Warning shall appear on the checkout page when a California delivery address is indicated for
16 any purchase of any Covered Product. An asterisk or other identifying method must be utilized to
17 identify which products on the checkout page are subject to the Warning. The Warning may be
18 provided with a conspicuous hyperlink stating “**WARNING**”, or the words “**CA WARNING**” or
19 “**CALIFORNIA WARNING**”, in all capital and bold letters so long as the hyperlink goes
20 directly to a page prominently displaying the Warning without content that detracts from the
21 Warning. A Warning is not prominently displayed if the purchaser must search for it in the
22 general content of the website.

23 The Warning shall be at least the same size as the largest of any other health or safety
24 warnings also appearing on the website, and in no event shall an Option 2 or Option 3 Warning be
25 in a type size smaller than 6-point type. No statements intended to or likely to have the effect of
26 diminishing the impact of the Warning on the average lay person shall accompany the internet
27 Warning. Further no statements may accompany the internet Warning that state or imply that the
28 source of the listed chemical has an impact on or results in a less harmful effect of the listed

1 chemical.

2 4Excelsior must display the Warning with such conspicuousness, as compared with other
3 words, statements or designs on its website, to render the Warning likely to be read and
4 understood by an ordinary individual under customary conditions of purchase or use of the
5 product. Where the website through which the Warning is provided for a Covered Product
6 includes consumer information about the Covered Product in a language other than English, the
7 Warning must also be provided in that language in addition to English.

8 The obligation to provide a warning for sales of Covered Products over the internet is in
9 addition to 4Excelsior's obligation to provide the Warning on the label of the Covered Product.

10 **3.3 Conforming Covered Products**

11 A Conforming Lead Covered Product is a Covered Product for which the "Daily Lead
12 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the exposure
13 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
14 3.4, and that is not known by 4Excelsior to contain other chemicals that violate Proposition 65's
15 safe harbor thresholds. A Conforming Mercury Covered Product is a Mercury Covered Product
16 for which the "Daily Mercury Exposure Level" is no greater than 0.3 micrograms of mercury per
17 day as determined by the exposure methodology set forth in Section 3.1.3 and the quality control
18 methodology described in Section 3.4, and that is not known by 4Excelsior to contain other
19 chemicals that violate Proposition 65's safe harbor thresholds. A Conforming Cadmium Covered
20 Product is a Cadmium Covered Product for which the "Daily Cadmium Exposure Level" is no
21 greater than 4.1 micrograms of cadmium per day as determined by the exposure methodology set
22 forth in Section 3.1.4 and the quality control methodology described in Section 3.4, and that is not
23 known by 4Excelsior to contain other chemicals that violation Proposition 65's safe harbor
24 thresholds. Conforming Lead Covered Products, Conforming Cadmium Covered Products, and
25 Conforming Mercury Covered Products may also be individually referred to herein as a
26 Conforming Covered Product or collectively referred to herein as Conforming Covered Products.

27 **3.4 Testing and Quality Control Methodology**

28 **3.4.1** Beginning within one year of the Effective Date, 4Excelsior shall

1 arrange for lead, cadmium, and mercury testing of the Covered Products at least once a year for
2 a minimum of two (2) consecutive years by arranging for testing of three (3) randomly selected
3 samples of each of the Covered Products, in the form intended for sale to the end-user, which
4 4Excelsior intends to sell or is manufacturing for sale in California, directly selling to a
5 consumer in California or “Distributing into the State of California” (the Original Testing).
6 Covered Products not manufactured for sale in California intended to be sold in California, or
7 distributed into or within California shall not be subject to testing obligations of this Section
8 3.4.1. If tests conducted pursuant to this Section 3.4.1 demonstrate that no Warning is required
9 for a Covered Product during each of two consecutive years, then the testing requirements of
10 this Section will no longer be required as to that Covered Product. However, if during or after
11 the two-year testing period, 4Excelsior changes ingredient suppliers for any of the Covered
12 Products and/or reformulates any of the Covered Products, 4Excelsior shall test that Covered
13 Product annually for at least one (1) consecutive year after such change is made; however, in
14 no event shall the total period of testing be less than two years.

15 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
16 and/or the “Daily Mercury Exposure Level” and/or the “Daily Cadmium Exposure Level,” the
17 highest lead and/or mercury and/or cadmium detection result of the three (3) randomly selected
18 samples of the Covered Products will be controlling. If, during a required testing year, the
19 highest result for a Covered Product pursuant to the Original Testing as described in Section
20 3.4.1 reflects an exposure in excess of the thresholds specified in Section 3.1 for lead, mercury,
21 or cadmium, as applicable, 4Excelsior shall have the right to retest three (3) randomly selected
22 samples from different lots (“Retest”), and the highest lead, mercury, or cadmium detection
23 result from the three samples tested during the Retest shall be used as controlling for
24 calculating the Daily Lead Exposure Level and/or the Daily Mercury Exposure Level and/or
25 the Daily Cadmium Exposure Level, as applicable, for that Covered Product for purposes of
26 the Consent Judgment. If 4Excelsior chooses to conduct a Retest, then it shall notify ERC in
27 writing that it has done so and shall provide the tests from the Original Testing and the Retest
28 to ERC as required pursuant to Section 3.4.6 or Section 6.2. Additionally, if 4Excelsior

1 chooses to conduct a Retest, it shall comply with Sections 3.1 and 3.2 with respect to any lot
2 from which the Original Testing sample that exceeded the threshold specified in Section 3.1
3 was obtained. This means that if any sample tested in the Original Testing had a Daily Lead
4 Exposure Level greater than 0.5 micrograms of lead per day and/or a Daily Mercury Exposure
5 Level greater than 0.3 micrograms of mercury per day and/or a Daily Cadmium Exposure
6 Level greater than 4.1 micrograms of cadmium per day, all as determined by the exposure
7 methodology set forth in Section 3.1.2, then 4Excelsior must comply with Sections 3.1 and 3.2
8 before selling or distributing Covered Products from that sample's lot to California consumers
9 or retailers or distributors who sell the Covered Products to consumers in California.
10 4Excelsior shall not be permitted to conduct a Retest on a Covered Product for any year in
11 which multiple samples from the Original Testing reflect an exposure in excess of the
12 thresholds specified in Section 3.1. 4Excelsior shall be permitted one Retest per Covered
13 Product for each of lead, mercury, and cadmium as outlined in this Section, during each year
14 that it performs testing. If any sample in the Retest reflects an exposure in excess of the
15 thresholds specified in Section 3.1, 4Excelsior shall comply with Sections 3.1 and 3.2 as to that
16 Covered Product. The results of any Retest shall not be considered in determining whether
17 4Excelsior's testing obligations have ceased as set forth in Section 3.4.1.

18 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
19 laboratory method that complies with the performance and quality control factors appropriate
20 for the method used, including limit of detection and limit of quantification, sensitivity,
21 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
22 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005
23 mg/kg for lead and mercury and cadmium.

24 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
25 independent third party laboratory certified by the California Environmental Laboratory
26 Accreditation Program or an independent third-party laboratory that is registered with the
27 United States Food & Drug Administration.

28 **3.4.5** Nothing in this Consent Judgment shall limit 4Excelsior's ability to

1 conduct, or require that others conduct, additional testing of the Covered Products, including
2 the raw materials used in their manufacture.

3 **3.4.6** Within thirty (30) days of ERC’s written request, 4Excelsior shall
4 deliver lab reports obtained pursuant to Section 3.4 to ERC. 4Excelsior shall retain all test
5 results and documentation for a period of two (2) years from the date of each test. ERC may
6 request no more than one report per Covered Product per calendar year.

7 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
8 any Covered Product for which 4Excelsior has provided the Warning specified in Section 3.2
9 continuously and uninterrupted after the Effective Date; however, in the event 4Excelsior
10 ceases to provide the Warning specified in Section 3.2, 4Excelsior may only do so after it has
11 tested such Covered Product, and 4Excelsior shall be required to comply with the testing
12 requirements of Section 3.4 prior to ceasing to provide the Warning, unless 4Excelsior can
13 show to the satisfaction of ERC that the cessation in providing the Warning was a temporary
14 error that was resolved when discovered.

15 **3.4.8** 4Excelsior shall not be obligated to test any Covered Product pursuant to
16 this Section 3.4 during any period of time that such Covered Product is discontinued and not
17 being manufactured, sold, or distributed into or within the State of California (collectively
18 referred to in this Section 3.4.8 as “California Sales Practices”). However, if 4Excelsior
19 resumes California Sales Practices with respect to any such Covered Product, 4Excelsior shall
20 provide a Warning on the product continually and uninterrupted immediately upon engaging in
21 California Sales Practices. If 4Excelsior does not provide a Warning on any Covered Product
22 for which it resumes California Sales Practices, 4Excelsior shall be required to begin testing
23 the Covered Product in accordance with Section 3.4 before resuming California Sales Practices
24 and shall begin, continue or resume complying with the testing requirements of Section 3.4
25 with respect to the Covered Product immediately after the date that 4Excelsior resumes
26 California Sales Practices with respect to the Covered Product. 4Excelsior shall not include
27 the period of time the Covered Product was discontinued and not being manufactured, sold, or
28 distributed into or within the State of California in calculating the two years for which testing

1 is required by this Section 3.4. For purposes of this Section 3.4.8, the term “discontinued” shall
2 mean that a decision has been made that a Covered Product will no longer be manufactured,
3 distributed or sold at some point in time.

4 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
5 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
6 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent
7 Judgment is intended by any Party to set a precedent for the level of lead, mercury, cadmium, or
8 other chemicals that are permissible in consumer products under Proposition 65. The Parties
9 expressly agree that nothing in Section 3 or elsewhere in this Consent Judgment shall be
10 construed as requiring reformulation. Warnings provided in compliance with this Consent
11 Judgment shall serve as a complete and sufficient method of compliance.

12 **3.6 Exclusion of Pre-Effective Date Products**

13 **3.6.1** So long as 4Excelsior can provide adequate documentation, if requested in
14 writing by ERC, Covered Products manufactured and not in the possession or under the control
15 of 4Excelsior on or prior to the Effective Date (“Pre-Effective Date Products”) shall be expressly
16 exempt from the injunctive terms set forth in Section 3, including but not limited to the warning
17 and testing requirements, and are instead permitted to be sold as is to California consumers and
18 are expressly released by Section 8. Such Pre-Effective Date Products may be sold or otherwise
19 distributed to California consumers in their current form and condition, without modification,
20 and their sale, distribution, or use shall not be deemed a violation of this Consent Judgment. This
21 exemption for such Pre-Effective Date Products shall apply with full force and effect to
22 4Excelsior and all Released Parties, and such Pre-Effective Date Products are expressly included
23 within the release of claims set forth in Section 8.

24 **3.6.2** For purposes of clarity: A Covered Product shall be presumed to qualify
25 as a Pre-Effective Date Product if 4Excelsior produces a dated invoice, batch record, or other
26 reasonable documentation showing a manufacturing date on or before the Effective Date as well
27 as a dated shipping record, delivery receipt, or other reasonable documentation showing that the
28 purported Pre-Effective Date Product was no longer in the possession of or under the control of

1 4Excelsior as of the Effective Date. In the event ERC disputes whether a product qualifies as a
2 Pre-Effective Date Product, and 4Excelsior has produced documentation pursuant to the
3 preceding sentence of this Section 3.6.2, the burden shall shift to ERC to demonstrate with
4 particularized evidence that the Covered Product was either manufactured after the Effective
5 Date or remained in the possession or control of 4Excelsior as of the Effective Date.

6 **3.6.3** For the avoidance of doubt, the Parties further agree that:

7 (a) such Pre-Effective Date Products are not “Covered Products” for purposes of
8 enforcement under this Consent Judgment;

9 (b) 4Excelsior shall have no obligation to recall, relabel, test, repackage, or
10 otherwise alter or modify any such Pre-Effective Date Products; and

11 (c) the continued sale, resale, or distribution of any such Pre-Effective Date
12 Products in the State of California shall not constitute a breach of this Consent Judgment or give
13 rise to any liability or claim for enforcement by ERC or any third party acting under this
14 agreement.

15 **3.6.4** This Section 3.6 is material inducement and essential to the consideration
16 exchanged herein, and the Parties agree that this section shall be interpreted and enforced in
17 favor of limiting 4Excelsior’s liability for legacy inventory manufactured and introduced into the
18 stream of commerce prior to the Effective Date.

19 **4. SETTLEMENT PAYMENTS**

20 **4.1**

21 (a) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the
22 Target Case, Target shall make a total payment of \$20,000.00 (“Target Total Settlement
23 Amount”) to ERC within 14 days of the Effective Date (“Target Due Date”).

24 (b) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the
25 Vitacost Case, Vitacost shall make a total payment of \$20,000.00 (“Vitacost Total Settlement
26 Amount”) to ERC within 14 days of the Effective Date (“Vitacost Due Date”).

27 (c) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the
28 CVS Case, CVS shall make a combined total payment of \$20,000.00 (“CVS Total Settlement

1 Amount”) to ERC within 14 days of the Effective Date (“CVS Due Date”).

2 (d) In full satisfaction of all potential civil penalties, attorney’s fees, and costs in the
3 4Excelsior Case, 4Excelsior shall make a total payment of \$450,000.00 (“4Excelsior Total
4 Settlement Amount”) to ERC in ten periodic payments (the “4Excelsior Periodic Payments”)
5 according to the following payment schedule (“4Excelsior Due Dates”):

- 6 • Payment 1 -- \$45,000.00 within 30 days of the date that this Consent
7 Judgment is executed by the Parties (“Execution Date”) (the first 4Excelsior
8 Due Date)
- 9 • Payment 2 -- \$45,000.00 within 60 days of the Execution Date (the second
10 4Excelsior Due Date)
- 11 • Payment 3 -- \$45,000.00 within 90 days of the Execution Date (the third
12 4Excelsior Due Date)
- 13 • Payment 4 -- \$45,000.00 within 120 days of the Execution Date (the fourth
14 4Excelsior Due Date)
- 15 • Payment 5 -- \$45,000.00 within 150 days of the Execution Date (the fifth
16 4Excelsior Due Date)
- 17 • Payment 6 -- \$45,000.00 within 180 days of the Execution Date (the sixth
18 4Excelsior Due Date)
- 19 • Payment 7 -- \$45,000.00 within 210 days of the Execution Date (the seventh
20 4Excelsior Due Date)
- 21 • Payment 8 -- \$45,000.00 within 240 days of the Execution Date (the eighth
22 4Excelsior Due Date)
- 23 • Payment 9 -- \$45,000.00 within 270 days of the Execution Date (the ninth
24 4Excelsior Due Date)
- 25 • Payment 10 -- \$45,000.00 within 300 days of the Execution Date (the tenth
26 4Excelsior Due Date)

27 4Excelsior, Target, Vitacost, and CVS shall each make their payments by wire transfer
28 to ERC’s account, for which ERC will give 4Excelsior, Target, Vitacost, and CVS the

1 necessary account information. Any party may prepay all or any portion of the amounts due at
2 any time without premium, penalty, interest, make-whole, yield maintenance, lost-profits, or
3 other charge. For any 4Excelsior Periodic Payments made by 4Excelsior to ERC prior to the
4 Effective Date, ERC shall hold these payments in its bank account and shall not distribute the
5 funds as outlined below until after the Effective Date. The Target Total Settlement Amount,
6 Vitacost Total Settlement Amount, CVS Total Settlement Amount, and 4Excelsior Total
7 Settlement Amount shall be apportioned as follows:

8 **4.2 Civil Penalties:** Civil penalties shall apportioned as follows:

9 (a) \$45,000.00 shall be considered a civil penalty attributable to the 4Excelsior
10 Case pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit
11 75% (\$33,750.00) of the civil penalty to the Office of Environmental Health Hazard
12 Assessment (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund
13 in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
14 remaining 25% (\$11,250.00) of the civil penalty.

15 (b) \$1,000.00 shall be considered a civil penalty attributable to the Target Case
16 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%
17 (\$750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment
18 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
19 with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25%
20 (\$250.00) of the civil penalty.

21 (c) \$1,000.00 shall be considered a civil penalty attributable to the CVS Case
22 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%
23 (\$750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment
24 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in
25 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
26 remaining 25% (\$250.00) of the civil penalty.

27 (d) \$1,000.00 shall be considered a civil penalty attributable to the Vitacost Case
28 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%

1 (\$750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment
2 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
3 with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25%
4 (\$250.00) of the civil penalty.

5 **4.3 Costs:** Except as explicitly provided in Sections 4.3 (a) through (d), ERC,
6 4Excelsior, Target, Vitacost, CVS shall each bear its own costs. The portion of each of the
7 Total Settlement Amounts paid by the Defendants that is attributable to ERC’s costs shall be
8 apportioned as follows:

9 (a) \$141,384.11 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing the 4Excelsior Case.

11 (b) \$1,389.02 shall be distributed to ERC as reimbursement to ERC for reasonable
12 costs incurred in bringing the Target Case.

13 (c) \$946.68 shall be distributed to ERC as reimbursement to ERC for reasonable
14 costs incurred in bringing the CVS Case.

15 (d) \$1,275.93 shall be distributed to ERC as reimbursement to ERC for reasonable
16 costs incurred in bringing the Vitacost Case.

17 **Legal Fees:** Except as explicitly provided in Sections 4.4 (a) through (d), ERC,
18 4Excelsior, Target, Vitacost, CVS shall each bear its own legal fees. The portion of each of
19 the Total Settlement Amounts paid by the Defendants that is attributable to ERC’s legal fees
20 shall be apportioned as follows:

21 (a) \$263,615.89 shall be distributed to ERC for its in-house legal fees and the fees
22 of its outside counsel attributed to the 4Excelsior Case.

23 (b) \$17,610.98 shall be distributed to ERC for its in-house legal fees attributed to the
24 Target Case.

25 (c) \$18,053.32 shall be distributed to ERC for its in-house legal fees attributed to the
26 CVS Case.

27 (d) \$17,724.07 shall be distributed to ERC for its in-house legal fees attributed to the
28 Vitacost Case.

1 **4.5** In the event that 4Excelsior fails to remit, in full, any of the 4Excelsior Periodic
2 Payments owed under Section 4.1 of this Consent Judgment on or before the applicable
3 4Excelsior Due Date, 4Excelsior shall be deemed to be in material breach of its obligations
4 under this Consent Judgment. ERC shall provide written notice of the delinquency to
5 4Excelsior via electronic mail. If 4Excelsior fails to deliver the delinquent payment within five
6 (5) days from the written notice, the 4Excelsior Total Settlement Amount, less any amounts
7 previously paid by 4Excelsior pursuant to Section 4.1(d), shall be immediately due and owing
8 and shall accrue interest at the statutory judgment interest rate provided in the California Code
9 of Civil Procedure section 685.010, and 4Excelsior shall forfeit any release provisions in
10 Section 8 that are for the benefit of 4Excelsior and the 4Excelsior Released Parties (as defined
11 in Section 8.1) until such time as the 4Excelsior Total Settlement Amount is paid in full.
12 Additionally, 4Excelsior agrees to pay ERC’s reasonable attorneys’ fees and costs for any
13 efforts to collect the payment(s) due from 4Excelsior under this Consent Judgment.

14 In the event that Target fails to remit the Target Total Settlement Amount owed under
15 Section 4.1(a) of this Consent Judgment on or before the Target Due Date, Target shall be
16 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
17 provide written notice of the delinquency to Target via electronic mail. If Target fails to
18 deliver the Target Total Settlement Amount within five (5) days from the written notice, the
19 Target Total Settlement Amount shall accrue interest at the statutory judgment interest rate
20 provided in the California Code of Civil Procedure section 685.010. Additionally, Target
21 agrees to pay ERC’s reasonable attorneys’ fees and costs for any efforts to collect the payment
22 due from Target under this Consent Judgment.

23 In the event that Vitacost fails to remit the Vitacost Total Settlement Amount owed
24 under Section 4.1(b) of this Consent Judgment on or before the Vitacost Due Date, Vitacost
25 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
26 shall provide written notice of the delinquency to Vitacost via electronic mail. If Vitacost fails
27 to deliver the Vitacost Total Settlement Amount within five (5) days from the written notice,
28 the Vitacost Total Settlement Amount shall accrue interest at the statutory judgment interest

1 rate provided in the California Code of Civil Procedure section 685.010. Additionally,
2 Vitacost agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the
3 payment due from Vitacost under this Consent Judgment.

4 In the event that CVS fails to remit the CVS Total Settlement Amount owed under
5 Section 4.1(c) of this Consent Judgment on or before the CVS Due Date, CVS shall be deemed
6 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
7 written notice of the delinquency to CVS via electronic mail. If CVS fails to deliver the CVS
8 Total Settlement Amount within five (5) days from the written notice, the CVS Total
9 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the
10 California Code of Civil Procedure section 685.010. Additionally, CVS agrees to pay ERC's
11 reasonable attorneys' fees and costs for any efforts to collect the payment due from CVS under
12 this Consent Judgment.

13 Notwithstanding any provision to the contrary in this Consent Judgment, any failure by
14 any other party to timely or fully make their settlement payment as required under Section
15 4.1(a), (b), (c), or (d), as applicable, shall not affect, impair, or limit in any way the release,
16 discharge, or effect of this Consent Judgment as to any other party that has fulfilled their
17 settlement payment obligations pursuant to Section 4.1. The releases, discharges, and
18 protections afforded to a party that has fulfilled its settlement payment obligation under this
19 Consent Judgment shall remain in full force and effect regardless of any breach or default by
20 any other party of a settlement payment obligation. For clarity, once a party has satisfied its
21 payment obligation in full, that party shall be deemed to have fully performed its payment
22 obligations under this Consent Judgment, and any default, breach, or nonperformance by
23 another party shall not diminish, impair, or otherwise affect the releases, discharges, or
24 protections applicable to the performing party.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
27 written stipulation of ERC and 4Excelsior and upon entry by the Court of a modified consent
28 judgment or (ii) by motion of either ERC or 4Excelsior pursuant to Section 5.3, and based

1 upon an agreement to modify the Consent Judgment, and upon entry by the Court of a
2 modified consent judgment.

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

15 **5.3** In the event that 4Excelsior initiates or otherwise requests a modification under
16 Section 5.1, and the meet and confer process leads to an agreed upon motion or stipulation for
17 a modification of the Consent Judgment, 4Excelsior shall reimburse ERC its costs and
18 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
19 arguing the motion or application. ERC shall not be reimbursed for attorneys’ fees if ERC
20 does not incur more than four (4) hours of combined attorney/paralegal time in the meet-and-
21 confer and motion/stipulation process.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
23 **JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
25 terminate this Consent Judgment.

26 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
27 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
28 inform 4Excelsior in a reasonably prompt manner of its test results, including information

1 sufficient to permit 4Excelsior to identify the Covered Products at issue. 4Excelsior shall,
2 within sixty (60) days following such notice, or such other time period agreed upon in writing
3 by ERC and 4Excelsior, provide ERC with testing information, from an independent third-
4 party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating
5 4Excelsior's compliance with the Consent Judgment. 4Excelsior may also provide a written
6 response to ERC explaining the steps taken to address any potential non-compliance. ERC
7 shall not initiate any legal action for enforcement without first complying with the meet-and-
8 confer process and providing 4Excelsior a meaningful opportunity to cure any alleged non-
9 compliance.

10 **6.3** In the event that 4Excelsior discovers any isolated instances of non-compliance
11 with the Consent Judgment, 4Excelsior shall promptly notify ERC and take immediate corrective
12 actions. 4Excelsior acknowledges its continuous commitment to ensuring compliance with
13 applicable laws and regulations and this Consent Judgment. In case of any alleged non-
14 compliance, ERC and 4Excelsior must first engage in good-faith meet-and-confer efforts as
15 indicated in Section 6.1.

16 **6.4** 4Excelsior retains the right to challenge any test results provided by ERC by
17 obtaining additional testing from an independent third-party laboratory that meets the applicable
18 requirements of this Consent Judgment. The cost of such additional testing shall be borne by
19 4Excelsior, and 4Excelsior shall have the right to present the results as evidence in any
20 subsequent legal proceeding.

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

28 ///

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution among ERC, on
3 behalf of itself and in the public interest, and 4Excelsior, KOS Naturals, Inc., KOS, Inc.,
4 Target Brands, Inc., Target Corporation, Vitacost.com, Inc., CVS Pharmacy, Inc., CVS Health
5 Corporation, and KOS Nutritionals, LLC, Jiaherb, Inc., and their respective officers, directors,
6 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
7 franchisees, licensees, customers (not including private label customers), distributors,
8 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
9 of any Covered Product, and the predecessors, successors, and assigns of any of them
10 (collectively, “Released Parties”) of all claims for violations of Proposition 65 up to the
11 Effective Date relating to alleged exposure to lead, mercury, and cadmium from the Covered
12 Products.

13 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
14 claims for violations of Proposition 65 up to the Effective Date based on exposure to lead from
15 the Lead Covered Products and/or mercury from the Mercury Covered Product and/or
16 cadmium from the Cadmium Covered Products as set forth in the Notices of Violation. ERC,
17 on behalf of itself only, hereby fully releases, remises, acquits, and discharges the Released
18 Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
19 obligations, damages, penalties, attorneys’ fees and costs, liabilities, remedies, and expenses of
20 every kind or nature whatsoever, whether known or unknown, suspected or unsuspected,
21 asserted or that could have been asserted from the handling, use, or consumption of the
22 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
23 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
24 lead (for the Lead Covered Products) and/or mercury (for the Mercury Covered Product)
25 and/or cadmium (for the Cadmium Covered Products). Notwithstanding any limitation in the
26 scope of claims that may be released that might be construed from Section 8.1, ERC, on behalf
27 of itself only, hereby further fully releases, remises, acquits, and discharges 4Excelsior, Target
28 Brands, Inc., Target Corporation, CVS Pharmacy, Inc., and CVS Health Corporation from any

1 and all claims, actions, causes of action, suits, demands, liabilities, obligations, damages,
2 penalties, attorneys' fees and costs, liabilities, remedies, and expenses of every kind or nature
3 whatsoever, whether known or unknown, suspected or unsuspected, asserted or that could have
4 been asserted from the handling, use, or consumption of the Covered Products, as to any
5 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
6 provide Proposition 65 warnings on the Covered Products regarding any other chemical listed
7 under Proposition 65, including without limitation lead, cadmium, mercury, their compounds,
8 Per- and polyfluoroalkyl substances ("PFAS"), including but not limited to perfluorooctanoic
9 acid ("PFOA") and perfluorooctane sulfonic acid ("PFOS"), and any of their salts, isomers,
10 isomeric mixtures, precursors, polymers, byproducts, degradation products, and other
11 derivatives (collectively, "PFAS and Derivatives"), and any related or derivative claims under
12 state or local law premised on the same alleged facts (including failure-to-warn, unfair
13 competition, false advertising, or public-nuisance theories based on alleged failure to provide
14 Proposition 65 warnings), up to and including the Effective Date. However, after the Effective
15 Date, Proposition 65 Resellers that do not provide a Warning within a reasonable time, but in
16 no event more than 60 days, after being instructed or notified by 4Excelsior to do so as
17 outlined in Section 3.2, are not released from liability for violations of Proposition 65.

18 **8.3** ERC on its own behalf only, waives and releases any and all claims it may have
19 against and 4Excelsior, Target, Vitacost, and CVS on their own behalf only for all actions or
20 statements made or undertaken in connection with the Notices and the Complaint, and the
21 Retailer Cases, up to and including the Effective Date. 4Excelsior, Target, Vitacost, and CVS
22 on their own behalf only, each waive and release any and all claims they may have against
23 ERC for all actions or statements made or undertaken in connection with the Notices and the
24 Complaint and Retailer Cases. Nothing in Section 8 shall affect or limit any Party's right to
25 seek to enforce the terms of this Consent Judgment that are applicable to that Party.

26 **8.4** Target, Vitacost, and CVS each release any and all claims they may have
27 against 4Excelsior arising from the Proposition 65 violations alleged by ERC in the Retailer
28 Cases, including attorney's fees and costs incurred in the Retailer Cases and the Settlement

1 Payment required in Section 4.1.

2 **8.5** It is possible that other claims not known to the Parties, arising out of the facts
3 alleged in the Notices and Complaint, or in the Retailer Cases, and relating to the Covered
4 Products, will develop or be discovered. ERC, 4Excelsior, Target, Vitacost, and CVS each
5 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown
6 claims and nevertheless waive California Civil Code section 1542 as to any such unknown
7 claims. California Civil Code section 1542 reads as follows:

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

12 The releasing Parties under this Section 8.5 acknowledge they may hereafter discover facts
13 different from or in addition to those now known or believed to be true, but intend this release
14 to be complete and final with respect to the claims released by them in this Consent Judgment.

15 **8.6** Compliance with the terms of this Consent Judgment shall be deemed to
16 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
17 exposures to lead and/or mercury and/or cadmium in the Covered Products as set forth in the
18 Notices and Complaint. However, after the Effective Date, Proposition 65 Resellers that do
19 not provide a Warning within a reasonable time, but in no event more than 60 days, after being
20 instructed or notified by 4Excelsior to do so as outlined in Section 3.2, are not released from
21 liability for violations of Proposition 65.

22 **8.7** Nothing in this Consent Judgment is intended to apply to any occupational or
23 environmental exposures arising under Proposition 65, nor shall it apply to any of 4Excelsior's
24 products other than the Covered Products. Nothing in this Consent Judgment is intended to
25 apply to any product identified in the Notices and Complaint other than the Covered Products
26 listed in this Consent Judgment.

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 In the event that any of the provisions of this Consent Judgment are held by a court to be

1 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
2 affected.

3 **10. GOVERNING LAW**

4 The terms and conditions of this Consent Judgment shall be governed by and construed in
5 accordance with the laws of the State of California, without regard to any conflicts of law
6 principles that would result in the application of the laws of another jurisdiction. The Parties
7 expressly agree that California law shall exclusively govern the interpretation, enforcement, and
8 any disputes arising out of or relating to this Consent Judgment.

9 **11. PROVISION OF NOTICE**

10 All notices required to be given to any Party to this Consent Judgment by another shall be
11 in writing and sent to the following agents listed below via first-class mail or via electronic mail
12 where required. Courtesy copies via email may also be sent.

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

14 Chris Heptinstall, Executive Director, Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
16 San Diego, CA 92108
17 Ph: (619) 500-3090
18 Email: chris.heptinstall@erc501c3.org

19 With a copy to:

20 Charles W. Poss
21 Environmental Research Center, Inc.
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Ph: (619) 500-3090
25 Email: charles.poss@erc501c3.org

26 **FOR EXCELSIOR NUTRITION INC dba 4EXCELSIOR:**

27 Lin Yisheng
28 1206 N Miller Street, Ste D
Anaheim, CA 92806
Email: Lin@4Excelsior.com

FOR TARGET BRANDS, INC. and TARGET CORPORATION:

Jake Vandelist
1000 Nicollet Mall, TPS-3144
Minneapolis, MN 55403
Ph: (612) 696-0184
Email: Jake.Vandelist@target.com

1 With a copy to:
2 Jeffrey B. Margulies
3 Ray Muro
4 Norton Rose Fulbright US LLP
5 555 South Flower Street, Forty-First Floor
6 Los Angeles, California 90071
7 Ph: (213) 892-9315
8 Email: jeff.margulies@nortonrosefulbright.com
9 raymond.muro@nortonrosefulbright.com

7 **FOR VITACOST.COM, INC.:**

8 Steve Prough
9 Assistant Secretary
10 Vitacost.Com, Inc.
11 P.O. Box 54143
12 Los Angeles CA 90054
13 Email: steve.prough@ralphs.com

12 With a copy to:
13 Carol Brophy
14 Steptoe LLP
15 One Market Plaza
16 Steuart Tower, Suite 1070
17 San Francisco, California 94105
18 Ph: (415) 365-6700
19 Email: cbrophy@steptoe.com

17 **FOR CVS PHARMACY, INC. and CVS HEALTH CORPORATION:**

18 Erin A. Moosbrugger
19 Sr. Legal Counsel—Litigation
20 1 CVS Dr
21 Woonsocket, RI 02895
22 Ph: (937) 654-0920
23 Email: Erin.Moosbrugger@CVSHealth.com

22 With a copy to:
23 Alecia E. Cotton
24 Rogers Joseph O'Donnell, PLC
25 311 California Street, 10th floor
26 San Francisco, CA 94104
27 Ph: (415) 956-2828
28 Email: ACotton@rjo.com

27 **12. COURT APPROVAL**

28 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a

1 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
2 Consent Judgment.

3 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
4 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
5 prior to the hearing on the motion.

6 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
7 void and have no force or effect.

8 **13. EXECUTION AND COUNTERPARTS**

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

12 **14. DRAFTING**

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

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

22 If a dispute arises with respect to any Party's compliance with the terms of this Consent
23 Judgment entered by the Court, the Parties to the dispute shall meet and confer in person, via
24 remote meeting, by telephone, and/or in writing and endeavor to resolve the dispute in an
25 amicable manner. No action or motion may be filed in the absence of such a good faith attempt to
26 resolve the dispute beforehand.

27 **16. ENFORCEMENT**

28 ERC may, by motion or order to show cause before the Superior Court of Alameda

1 County, enforce the terms and conditions contained in this Consent Judgment. In any action
2 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
3 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
4 To the extent the failure to comply with the Consent Judgment constitutes a violation of
5 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
6 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
7 provided by law for failure to comply with Proposition 65 or other laws.

8 **17. ENTIRE AGREEMENT, AUTHORIZATION**

9 **17.1** This Consent Judgment contains the sole and entire agreement and
10 understanding of the Parties with respect to the entire subject matter herein, including any and
11 all prior discussions, negotiations, commitments, and understandings related thereto. No
12 representations, oral or otherwise, express or implied, other than those contained herein have
13 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
14 herein, shall be deemed to exist or to bind any Party.

15 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

22 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
23 equitable settlement of all matters raised by the allegations of the Complaint and by the
24 complaints filed in the Related Cases, that the matter has been diligently prosecuted, and that the
25 public interest is served by such settlement; and

26 (2) Make the findings pursuant to California Health and Safety Code section
27 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

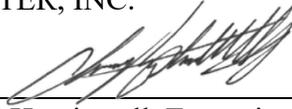
28 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after

1 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

2 **IT IS SO STIPULATED:**

3
4 Dated: December 22, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

5
6 By: 
Chris Heptinstall, Executive Director

7
8 Dated: 12/11/2025, 2025

EXCELSIOR NUTRITION INC,
individually and dba 4EXCELSIOR

9
10 
11 By: Lin Yisheng
12 Its: CEO

13 Dated: _____, 2025

TARGET BRANDS, INC. AND TARGET
CORPORATION

14
15
16 By:
Their:

17 Dated: _____, 2025

VITACOST.COM, INC.

18
19
20 By:
21 Its:

22 Dated: _____, 2025

CVS PHARMACY, INC. AND CVS
HEALTH CORPORATION

23
24
25 By: Tom Moffatt
26 Their: Vice President and Corporate
Secretary

27 ///

28 ///

1 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

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4 Dated: _____, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

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6 By: _____
Chris Heptinstall, Executive Director

7
8 Dated: _____, 2025

EXCELSIOR NUTRITION INC,
individually and dba 4EXCELSIOR

9
10 _____
11 By: Lin Yisheng
12 Its: CEO

13 Dated: December 12, 2025

TARGET BRANDS, INC. AND TARGET
CORPORATION

14
15 *Jacob Vandelist*

16 _____
By: Jacob Vandelist
Their: Director Counsel

17 Dated: _____, 2025

VITACOST.COM, INC.

18
19 _____
20 By:
21 Its:

22 Dated: _____, 2025

CVS PHARMACY, INC. AND CVS
HEALTH CORPORATION

23
24 _____
25 By: Tom Moffatt
26 Their: Vice President and Corporate
Secretary

27 ///

28 ///

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CENTER, INC.

4 By: _____
Chris Heptinstall, Executive Director

5
6
7
8 Dated: _____, 2025

EXCELSIOR NUTRITION INC,
individually and dba 4EXCELSIOR

9
10 _____
By: Lin Yisheng
Its: CEO

11
12
13 Dated: _____, 2025

TARGET BRANDS, INC. AND TARGET
CORPORATION

14
15 _____
By:
Their:

16
17 Dated: _____, 2025

VITACOST.COM, INC.

18
19 
20 By: Steve Prough
21 Its: Asst Sec

22 Dated: _____, 2025

CVS PHARMACY, INC. AND CVS
HEALTH CORPORATION

23
24 _____
25 By: Tom Moffatt
26 Their: Vice President and Corporate
Secretary

27 ///

28 ///

1 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

2 **IT IS SO STIPULATED:**

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4 Dated: _____, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

5
6 By: _____
Chris Heptinstall, Executive Director

7
8 Dated: _____, 2025

EXCELSIOR NUTRITION INC,
individually and dba 4EXCELSIOR

9
10 _____
11 By: Lin Yisheng
12 Its: CEO

13 Dated: _____, 2025

TARGET BRANDS, INC. AND TARGET
CORPORATION

14
15 _____
16 By:
17 Their:

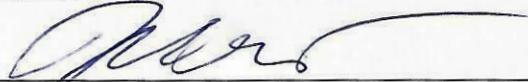
18 Dated: _____, 2025

VITACOST.COM, INC.

19
20 _____
21 By:
22 Its:

23 Dated: December 22, 2025

CVS PHARMACY, INC. AND CVS
HEALTH CORPORATION

24 

25 By: Thomas S. Moffatt
26 Their: Vice President and Corporate
Secretary/Asst. Corporate Secretary

27 ///

28 ///

1 **APPROVED AS TO FORM:**

2
3 Dated: December 15, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

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

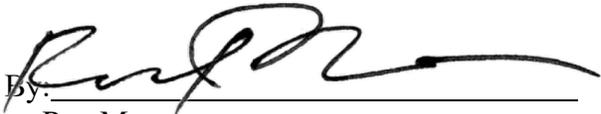
8 Dated: December 11, 2025

MILSTEIN JACKSON FAIRCHILD &
WADE, LLP

9
10 By: 
11 Saba Sheida
12 Attorney for Defendant Excelsior
13 Nutrition Inc, individually and dba
14 4Excelsior

15 Dated: December 12, 2025

NORTON ROSE FULBRIGHT US LLP

16
17 By: 
18 Ray Muro
19 Attorney for Target Brands, Inc. and
20 Target Corporation

21 Dated: _____, 2025

STEPTOE LLP

22 By: _____
23 Carol Brophy
24 Attorney for Vitacost.com, Inc.

25 Dated: _____, 2025

ROGERS JOSEPH O'DONNELL PLC

26
27 By: _____
28 Alecia E. Cotton
Attorney for CVS Pharmacy, Inc. and
CVS Health Corporation

1 **APPROVED AS TO FORM:**

2
3 Dated: _____, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

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

8 Dated: _____, 2025

MILSTEIN JACKSON FAIRCHILD &
WADE, LLP

9
10 By: _____
11 Saba Sheida
12 Attorney for Defendant Excelsior
13 Nutrition Inc, individually and dba
14 4Excelsior

15 Dated: _____, 2025

NORTON ROSE FULBRIGHT US LLP

16
17 By: _____
18 Ray Muro
19 Attorney for Target Brands, Inc. and
20 Target Corporation

21 Dated: December 11, 2025

STEPTOE LLP

22 By:  _____
23 Carol Brophy
24 Attorney for Vitacost.com, Inc.

25 Dated: _____, 2025

ROGERS JOSEPH O'DONNELL PLC

26
27 By: _____
28 Alecia E. Cotton
Attorney for CVS Pharmacy, Inc. and
CVS Health Corporation

1 **APPROVED AS TO FORM:**

2
3 Dated: _____, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

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

8 Dated: December 11, 2025

MILSTEIN JACKSON FAIRCHILD &
WADE, LLP

9
10 By:  _____
11 Saba Sheida
12 Attorney for Defendant Excelsior
13 Nutrition Inc, individually and dba
14 4Excelsior

15 Dated: _____, 2025

NORTON ROSE FULBRIGHT US LLP

16
17 By: _____
18 Ray Muro
19 Attorney for Target Brands, Inc. and
20 Target Corporation

21 Dated: _____, 2025

STEPTOE LLP

22 By: _____
23 Carol Brophy
24 Attorney for Vitacost.com, Inc.

25 Dated: December 11, 2025

ROGERS JOSEPH O'DONNELL PLC

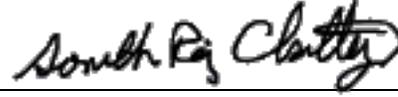
26 By:  _____
27 Alecia E. Cotton
28 Attorney for CVS Pharmacy, Inc. and
CVS Health Corporation

1 **PROPOSED** ORDER AND JUDGMENT

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5
6 Dated: 02/02/2026, 2026



7 _____
8 Judge of the Superior Court

9 **S. Raj Chatterjee / Judge**

EXHIBIT A



Environmental Research Center

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

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2020-01039 dated April 23, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

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 product 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 this product. 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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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

KOS Nature-Powered Organic Spirulina 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.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 23, 2017*, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2020-01039 dated April 23, 2020**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024



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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
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San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

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

October 15, 2024

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

October 15, 2024

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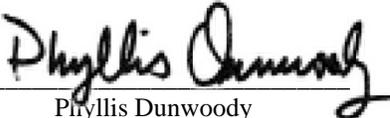
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cfepd@yolocounty.org

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
Markleeville, CA 96120

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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, Glenn
County
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County
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Eureka, CA 95501

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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
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Madera, CA 93637

District Attorney, Mendocino
County
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Ukiah, CA 95482

District Attorney, Modoc
County
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Alturas, CA 96101-4020

District Attorney, Mono
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Bridgeport, CA 93517

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County
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Hollister, CA 95023

District Attorney, San
Bernardino County
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San Bernadino, CA 92415

District Attorney, San Mateo
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Redwood City, CA 94063

District Attorney, Shasta
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Redding, CA 96001

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District Attorney, Siskiyou
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Yreka, CA 96097

District Attorney, Solano
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Fairfield, CA 94533

District Attorney, Stanislaus
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District Attorney, Trinity
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District Attorney, Tuolumne
County
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Sonora, CA 95370

District Attorney, Yuba
County
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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.



Environmental Research Center

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

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2020-01240 dated May 21, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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

1. **KOS Nature-Powered Organic Fo-Ti Powder– Lead**
2. **KOS Nature-Powered Organic Plant Protein Chocolate Chip Mint Flavor- Lead, Cadmium**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 21, 2017*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

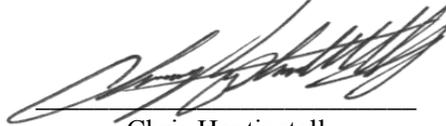
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified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

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2020-01240 dated May 21, 2020**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

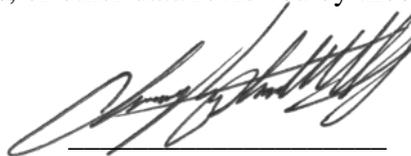
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024



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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

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Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

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CEPDProp65@acgov.org

Barbara Yook, District Attorney
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October 15, 2024

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Mark Ankcorn, Deputy City Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 15, 2024

Page 7

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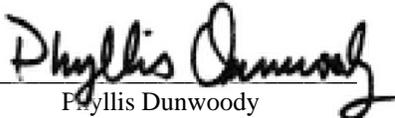
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On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
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Jackson, CA 95642

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

District Attorney, Colusa
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Colusa, CA 95932

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450 H Street, Room 171
Crescent City, CA 95531

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Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
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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
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Hall of Justice
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District Attorney, Madera
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District Attorney, Mendocino
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District Attorney, Modoc
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Alturas, CA 96101-4020

District Attorney, Mono
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Bridgeport, CA 93517

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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.



Environmental Research Center

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

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2020-01629 dated July 2, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am 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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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. KOS Nature-Powered Organic Maca Root Powder – Lead**
- 2. KOS Nature-Powered Organic Greens Blend – Lead**
- 3. KOS Nature-Powered Show Me The Greens! Green Apple Sorbet Flavored – Lead**
- 4. KOS Nature-Powered Organic Flax Seed Powder – Lead**
- 5. KOS Nature-Powered Organic Chlorella Powder – Lead**
- 6. KOS Nature-Powered Organic Ashwagandha Powder – Lead**

7. KOS Nature-Powered Organic Rhodiola Root 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.

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 2, 2017*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2020-01629 dated July 2, 2020**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

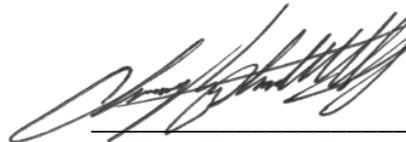
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024



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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
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7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

October 15, 2024

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October 15, 2024

Page 6

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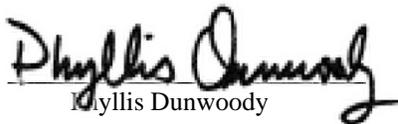
Gregory D. Totten, District Attorney
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301 Second Street
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cfepd@yolocounty.org

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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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.



Environmental Research Center

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

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2020-01796 dated July 23, 2020. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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

- 1. KOS Nature-Powered Organic Matcha Powder – Lead**
- 2. KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavor – Lead, Cadmium**

3. **KOS Nature-Powered Organic Cinnamon Bark Powder – Lead**
4. **KOS Nature-Powered Organic Plant Protein Vanilla Flavor – Lead**
5. **KOS Nature-Powered Organic Plant Protein Chocolate Flavor – Lead, Cadmium**

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

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 23, 2017*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

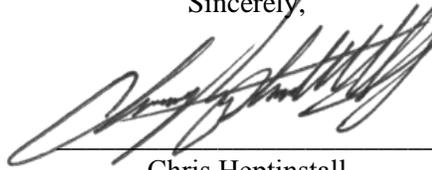
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified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

October 15, 2024

Page 3

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Heptinstall", written over a horizontal line.

Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2020-01796 dated July 23, 2020**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

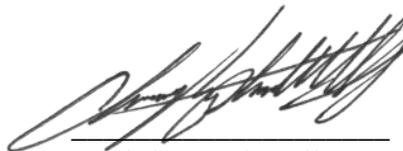
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024



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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

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

October 15, 2024

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

October 15, 2024

Page 7

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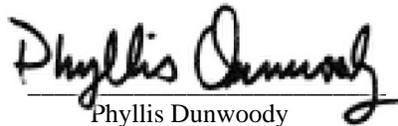
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Executed on October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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Los Angeles City Attorney's
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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.



Environmental Research Center

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

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2021-00587 dated March 9, 2021. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am 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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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. KOS Nature-Powered Organic Plant Protein Salted Caramel Coffee Flavor– Lead**
- 2. KOS Nature-Powered Organic Plant Protein with Blue Spirulina & Immunity Blend Blueberry Muffin Flavor – Lead**
- 3. KOS Nature-Powered Kiss Your Blues Away Berry Coconut Cooler Flavored– Lead**
- 4. KOS Nature-Powered Holy Cacao! Cinnamon Cocoa Flavored– 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.

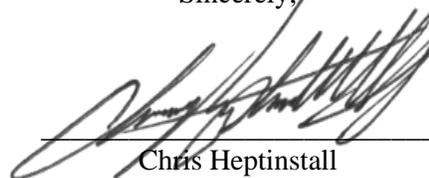
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 9, 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 expensive and time-consuming litigation.

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

***date reflects original violation date of AG Number 2021-00587 dated March 9, 2021**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024


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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

October 15, 2024

Page 5

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

October 15, 2024

Page 6

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

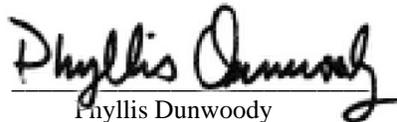
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daspecialops@ventura.org

Bud Porter, Supervising Deputy District Attorney
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Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
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P.O. Box 248
17300 Hwy 89
Markleeville, CA 96120

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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
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Crescent City, CA 95531

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District Attorney, Kings
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Hanford, CA 93230

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District Attorney, Los Angeles
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Los Angeles, CA 90012

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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

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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.



Environmental Research Center

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

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2021-00718 dated March 23, 2021. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am 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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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. KOS Nature-Powered At Ease, Soldier! – Lead**
- 2. KOS Nature-Powered Rhodiola Root – Lead**
- 3. KOS Nature-Powered Matcha Tea – 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.

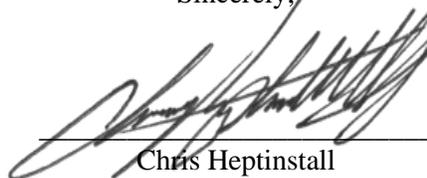
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 23, 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 expensive and time-consuming litigation.

Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2021-00718 dated March 23, 2021**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024


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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 5

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

James Clinchard, Assistant District Attorney
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Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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

Kimberly Lewis, District Attorney
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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

Todd Spitzer, District Attorney
Orange County
300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

Morgan Briggs Gire, District Attorney
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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

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

October 15, 2024

Page 6

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatt.org

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

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

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

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

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

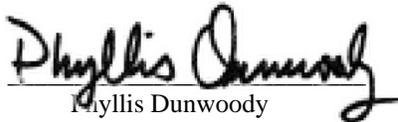
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
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, 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
300 South G Street, Ste 300
Madera, CA 93637

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
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

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>.

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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.

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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.

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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.



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2022-02786 dated November 18, 2022. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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

- 1. KOS Nature-Powered A Whole Latte Gold Golden Mylk Blend Gingerbread Chai Flavored – Lead, Mercury**

2. **KOS Nature-Powered Sippin' On Shroomboom Mushroom Coffee Blend Dark Chocolate Mocha Flavored - Lead**
3. **KOS Nature-Powered Immune Defense With EpiCor – Lead**
4. **KOS Nature-Powered Organic Plant Protein Vanilla Bavarian Cream Flavored-Mercury**

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.

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 these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 18, 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

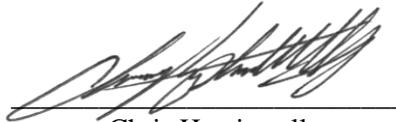
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified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

October 15, 2024

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Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Heptinstall", is written over a horizontal line.

Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2022-02786 dated November 18, 2022**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024


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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 6

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

James Clinchard, Assistant District Attorney
El Dorado County
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Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
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2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
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Kimberly Lewis, District Attorney
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550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

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

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1127 First Street, Ste C
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CEPD@countyofnapa.org

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

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Santa Ana, CA 92703
Prop65notice@ocdapa.org

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Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
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Prop65@sacda.org

Summer Stephan, District Attorney
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SanDiegoDAProp65@sdca.org

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

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

October 15, 2024

Page 7

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatt.org

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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

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

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

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

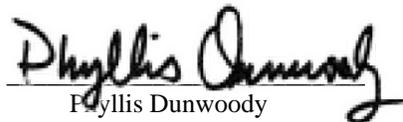
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
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, 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
300 South G Street, Ste 300
Madera, CA 93637

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
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

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.



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2023-01127 dated April 27, 2023. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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. KOS Nature-Powered Organic Plant Protein Chocolate Flavored (390 g) - Perfluorooctanoic Acid (PFOA)**

2. **KOS Nature-Powered Organic Plant Protein Vanilla Flavored (518 g) - Perfluorooctanoic Acid (PFOA)**
3. **KOS Nature-Powered Organic Plant Protein Chocolate Flavored (546 g) – Perfluorooctanoic Acid (PFOA)**
4. **KOS Nature-Powered Organic Plant Protein Chocolate Chip Mint Flavored (546 g) - Perfluorooctanoic Acid (PFOA)**
5. **KOS Nature-Powered Organic Plant Protein Vanilla Flavored (370 g) - Perfluorooctanoic Acid (PFOA)**

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical 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 27, 2020*, 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.

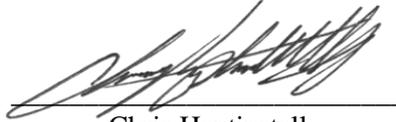
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall the identified products so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for products sold in the future while reformulating such products to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed products, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

October 15, 2024

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Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2023-01127 dated April 27, 2023**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

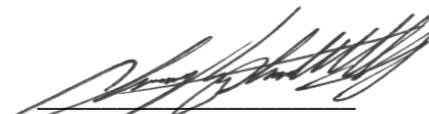
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024



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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 6

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

James Clinchard, Assistant District Attorney
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Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
Lassen County
2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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Mariposa, CA 95338
mcda@mariposacounty.org

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550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

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

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

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

Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@ocdapa.org

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10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
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Quincy, CA 95971
davidhollister@countyofplumas.com

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Riverside, CA 92501
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Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
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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

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

October 15, 2024

Page 7

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatt.org

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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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

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

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221 S Mooney Blvd
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Prop65@co.tulare.ca.us

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

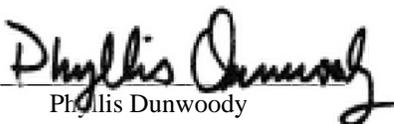
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
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, 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
300 South G Street, Ste 300
Madera, CA 93637

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
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

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.



Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

*****This Notice amends the original Notice of Violation AG Number 2023-01360 dated May 18, 2023. This Notice adds Excelsior Nutrition Inc, individually and dba 4Excelsior as the manufacturer.**

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:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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. KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavored 585g - Perfluorooctanoic Acid (PFOA)**

2. **KOS Nature-Powered Organic Plant Protein Salted Caramel Coffee Flavored 518g - Perfluorooctanoic Acid (PFOA)**
3. **KOS Nature-Powered Organic Plant Protein with Blue Spirulina & Immunity Blend Blueberry Muffin Flavor 585g – Perfluorooctanoic Acid (PFOA)**

On November 10, 2017, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical known to cause developmental toxicity. On February 25, 2022, the State of California officially listed Perfluorooctanoic Acid (PFOA) as a chemical 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 May 18, 2020*, 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.

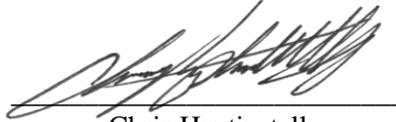
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall the identified products so as to eliminate further exposures to the identified chemical, and/or (2) affix clear and reasonable Prop 65 warning labels for products sold in the future while reformulating such products to eliminate the exposures, and (3) conduct bio-monitoring of all California consumers that have ingested the identified chemical in the listed products, and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

October 15, 2024

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Please direct all questions concerning this notice to my attention, Chris Heptinstall, Executive Director of 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 Excelsior Nutrition Inc, individually and dba 4Excelsior and its Registered Agent for Service of Process only)

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

***date reflects original violation date of AG Number 2023-01360 dated May 18, 2023**

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Excelsior Nutrition Inc, individually and dba 4Excelsior

I, Chris Heptinstall, hereby declare:

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

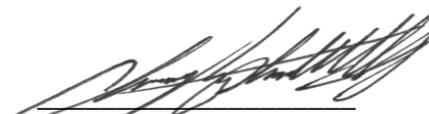
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

4. Based on the information obtained through those consultants, and on all 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 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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 15, 2024



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 October 15, 2024, 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:

Yisheng Lin, Chief Executive Officer
or Current President or CEO
Excelsior Nutrition Inc, individually and dba 4Excelsior
1206 N Miller St, Ste D
Anaheim, CA 92806

Yisheng Lin
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1206 N Miller St, Ste D
Anaheim, CA 92806

Ying Chen
(Registered Agent for Excelsior Nutrition Inc,
individually and dba 4Excelsior)
1 Chapin Rd, Unit 1
Pine Brook, NJ 07058

On October 15, 2024, 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 October 15, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

October 15, 2024

Page 6

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

James Clinchard, Assistant District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667
EDCDAPROP65@edcda.us

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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

Devin Chandler, Program Coordinator
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2950 Riverside Dr
Susanville, CA 96130
dchandler@co.lassen.ca.us

Lori E. Frugoli, District Attorney
Marin County
3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
consumer@marincounty.org

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P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

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

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

Allison Haley, District Attorney
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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

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300 N Flower St
Santa Ana, CA 92703
Prop65notice@ocdapa.org

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Roseville, CA 95678
Prop65@placer.ca.gov

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

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

Anne Marie Schubert, District Attorney
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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

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

October 15, 2024

Page 7

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney
Santa Clara City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Henry Lifton, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Prop65@sfcityatt.org

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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

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600 Administration Dr
Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

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

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

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

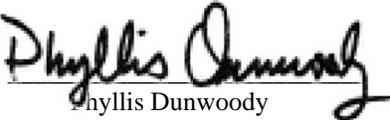
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 15, 2024, 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 October 15, 2024, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
17300 Hwy 89
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, 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
300 South G Street, Ste 300
Madera, CA 93637

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
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

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

January 5, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Target Brands, Inc.
Target Corporation**

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

**KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Flavored
- 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 this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 5, 2021, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Target Brands, Inc., Target Corporation, 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 Target Brands, Inc. and Target Corporation

I, Charles Poss, 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.

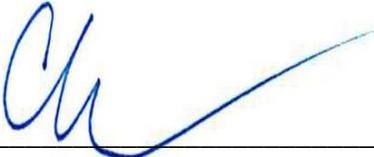
2. I am an attorney for the noticing party.

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: January 5, 2024



Charles Poss

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 January 5, 2024, 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
Target Brands, Inc. and Target Corporation
1000 Nicollet Mall
Minneapolis, MN 55403

CT Corporation System
(Registered Agent for Target Corporation)
330 N Brand Blvd, Ste 700
Glendale, CA 91203

Current President or CEO
Target Brands, Inc. and Target Corporation
89 Forest Rd
Franklin, IN 46131

CT Corporation System
(Registered Agent for Target Brands, Inc.
and Target Corporation)
1010 Dale St N
St. Paul, MN 55117

On January 5, 2024, 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 January 5, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

January 5, 2024

Page 5

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

James Clinchard, Assistant District Attorney
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EDCDAPROP65@edcda.us

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168 North Edwards Street
Independence, CA 93526
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Susanville, CA 96130
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San Rafael, CA 94903
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550 West Main St
Merced, CA 95340
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Prop65DA@co.monterey.ca.us

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DA.Prop65@co.nevada.ca.us

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Roseville, CA 95678
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davidhollister@countyofplumas.com

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Riverside, CA 92501
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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

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

January 5, 2024

Page 6

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Nora V. Frimann, City Attorney
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200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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San Francisco City Attorney
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San Francisco, CA 94102
Prop65@sfcityatty.org

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Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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DAConsumer.Environmental@sjcda.org

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Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

Eric J. Dobroth, Deputy District Attorney
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edobroth@co.slo.ca.us

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

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

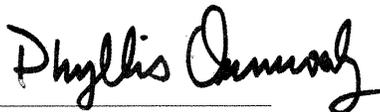
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On January 5, 2024, 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 January 5, 2024, 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, 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, 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
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

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.



Environmental Research Center

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

January 19, 2024

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Target Brands, Inc.
Target Corporation**

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

**KOS Nature-Powered Organic Superfood Plant Protein Powder with Blue Spirulina
Blueberry Muffin Flavored - 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 this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 19, 2021, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Target Brands, Inc., Target Corporation, 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 Target Brands, Inc. and Target Corporation

I, Charles Poss, 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.

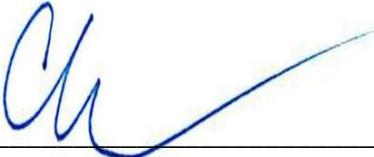
2. I am an attorney for the noticing party.

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: January 19, 2024



Charles Poss

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 January 19, 2024, 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
Target Brands, Inc. and Target Corporation
1000 Nicollet Mall
Minneapolis, MN 55403

CT Corporation System
(Registered Agent for Target Corporation)
330 N Brand Blvd, Ste 700
Glendale, CA 91203

Current President or CEO
Target Brands, Inc. and Target Corporation
89 Forest Rd
Franklin, IN 46131

CT Corporation System
(Registered Agent for Target Brands, Inc.
and Target Corporation)
1010 Dale St N
St. Paul, MN 55117

On January 19, 2024, 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 January 19, 2024, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
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San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

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

January 19, 2024

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

January 19, 2024

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

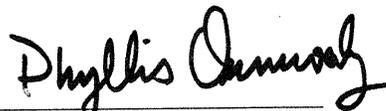
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cfepd@yolocounty.org

On January 19, 2024, 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 January 19, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
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District Attorney, Amador
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25 County Center Drive, Suite
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Oroville, CA 95965

District Attorney, Colusa
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Colusa, CA 95932

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

District Attorney, Glenn
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District Attorney, Humboldt
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Eureka, CA 95501

District Attorney, Imperial
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El Centro, CA 92243

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Bakersfield, CA 93301

District Attorney, Kings
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Hanford, CA 93230

District Attorney, Lake County
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Lakeport, CA 95453

District Attorney, Los Angeles
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Hall of Justice
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Los Angeles, CA 90012

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

District Attorney, Mendocino
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Ukiah, CA 95482

District Attorney, Modoc
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Alturas, CA 96101-4020

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San Bernadino, CA 92415

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Redwood City, CA 94063

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Redding, CA 96001

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Fairfield, CA 94533

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Yuba City, CA 95991

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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

EXHIBIT C



Environmental Research Center

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

January 26, 2024

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 In-House Counsel for 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:

Vitacost.com, Inc.

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. KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Flavored - Lead**
- 2. KOS Nature-Powered Organic Superfood Plant Protein Powder Vanilla Flavored - Lead**
- 3. KOS Nature-Powered Organic Superfood Plant Protein Powder Salted Caramel Coffee Flavored - Lead**

4. **KOS Nature-Powered Organic Superfood Plant Protein Powder Unflavored & Unsweetened - Lead**
5. **KOS Nature-Powered Organic Superfood Plant Protein Powder Blueberry Muffin Flavored - Lead**
6. **KOS Nature-Powered Organic Superfood Plant Protein Powder Chocolate Peanut Butter Flavored – 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 January 26, 2021, 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 expensive and time-consuming litigation.

January 26, 2024

Page 3

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Vitacost.com, Inc. and its 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 Vitacost.com, Inc.

I, Charles Poss, declare:

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

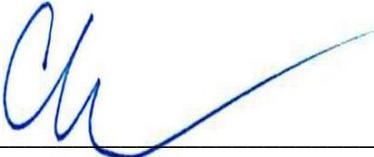
2. I am an attorney for the noticing party.

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

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

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

Dated: January 26, 2024



Charles Poss

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 January 26, 2024, 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
Vitacost.com, Inc.
1014 Vine Street
Cincinnati, OH 45202

Current President or CEO
Vitacost.com, Inc.
5400 Broken Sound Boulevard NW, Suite 500
Boca Raton, FL 33487

Current President or CEO
Vitacost.com, Inc.
4700 Exchange Ct, Ste 200
Boca Raton, FL 33431

Corporation Service Company
(Registered Agent for Vitacost.com, Inc.)
1201 Hays Street
Tallahassee, FL 32301

Corporation Service Company
(Registered Agent for Vitacost.com, Inc.)
251 Little Falls Dr
Wilmington, DE 19808

On January 26, 2024, 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> :

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Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
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Oakland, CA 94612-0550

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

January 26, 2024

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January 26, 2024

Page 7

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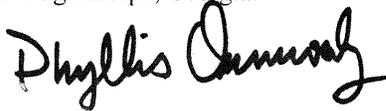
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Executed on January 26, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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Bakersfield, CA 93301

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

District Attorney, Lake County
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Lakeport, CA 95453

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San Bernadino, CA 92415

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Downieville, CA 95936

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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.

EXHIBIT D



Environmental Research Center

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

December 14, 2023

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

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

CVS Pharmacy, Inc.
CVS Health Corporation

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. KOS Nature-Powered Organic Plant Protein Chocolate Flavored – Lead**
- 2. KOS Nature-Powered Organic Plant Protein Chocolate Peanut Butter Flavored - Lead**

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

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 14, 2020, 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 expensive and time-consuming litigation.

Please direct all questions concerning this notice to my attention, or Chris Heptinstall, Executive Director of ERC, at the above listed address and telephone number.

Sincerely,



Charles Poss
In-House Counsel
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to CVS Pharmacy, Inc., CVS Health Corporation, 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 CVS Pharmacy, Inc.; CVS Health Corporation

I, Charles Poss, 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.

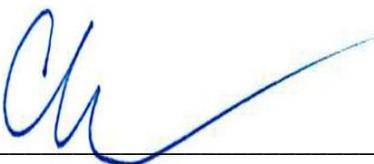
2. I am an attorney for the noticing party.

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: December 14, 2023



Charles Poss

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On December 14, 2023, 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
CVS Pharmacy, Inc. and CVS
Health Corporation
1 CVS Drive
Woonsocket, RI 02895

CT Corporation System
(Registered Agent for CVS Pharmacy, Inc.)
450 Veterans Memorial Parkway, Ste 7A
East Providence, RI 02914

The Corporation Trust Company
(Registered Agent for CVS Health Corporation and
CVS Pharmacy, Inc.)
1209 N. Orange Street
Wilmington, DE 19801

Current President or CEO
CVS Health Corporation
8911 Cynthia St, Ste 1
West Hollywood, CA 90069

CT Corporation System
(Registered Agent for CVS Pharmacy, Inc.)
330 North Brand Blvd, Suite 700
Glendale, CA 91203

Elaine Selan
(Registered Agent for CVS Health Corporation)
416 W San Ysidro Blvd, L-1958
San Ysidro, CA 92173

On December 14, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On December 14, 2023, 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:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

December 14, 2023

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Prop65@countyofmerced.com

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Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney
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Todd Spitzer, District Attorney
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Santa Ana, CA 92703
Prop65notice@ocdapa.org

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davidhollister@countyofplumas.com

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SanDiegoDAProp65@sdca.org

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CityAttyProp65@sandiego.gov

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

December 14, 2023

Page 6

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DAConsumer.Environmental@sjcda.org

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Jeannie.Barnes@sonoma-county.org

Eric J. Dobroth, Deputy District Attorney
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County Government Center Annex, 4th Floor
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Prop65@co.tulare.ca.us

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

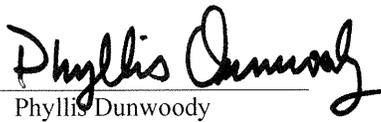
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On December 14, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on December 14, 2023, 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, 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, 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
County
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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

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

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

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

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

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

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

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

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

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

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

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| 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 02/23/2026 |
| PLAINTIFF/PETITIONER: ENVIRONMENTAL RESEARCH CENTER, INC., a California non-profit corporation et al | Chad Finke, Executive Officer / Clerk of the Court By:  Deputy B. Mercado |
| DEFENDANT/RESPONDENT: Kos Naturals, LLC et al | |
| CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6 | CASE NUMBER: RG20075140 |

I, the below named Executive Officer/Clerk of Court 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 one copy of the Order AMENDED [PROPOSED] STIPULATED CONSENT JUDGMENT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 02/23/2026

Chad Finke, Executive Officer / Clerk of the Court

By:



B. Mercado, Deputy Clerk