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FOUNDING PARTNER EMERITUS  
RACHEL J. ZWILLINGER  
FELLOW

*Via First Class Certified Mail  
Return Receipt Requested*

September 17, 2014

Earth Circle Organics  
355 Crown Point Circle, Ste. D  
Grass Valley, CA 95945

Re: Notice of Violation of California Health & Safety Code §25249.5, *et seq.*

To Whom It May Concern:

Altshuler Berzon LLP (“Firm”) represents As You Sow, a 501(c)(3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. As You Sow is based in Oakland, California and was incorporated in 1992 under the laws of the State of California.

As You Sow has documented violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by Earth Circle Organics (the “Company”). This letter constitutes notice by As You Sow and the Firm to the Company of these violations. Specifically, the Company has violated and is violating Section 25249.6, which provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual . . . .”

Pursuant to Section 25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of As You Sow sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.

Alleged Violator: The name of the alleged violator covered by this notice is Earth Circle Organics.

Listed Chemicals: These violations involve exposures to cadmium from the product listed below. On October 1, 1987, the State of California officially listed cadmium as a chemical known to the State cause cancer; and on May 1, 1997, listed cadmium as a chemical known to the State to cause reproductive toxicity.

Consumer Products: The product that is the subject of this notice is Earth Circle Foods Raw & Wildcrafted Dulse, which is produced, sold, and/or distributed by Earth Circle Organics.

Violations: The alleged violator knowingly and intentionally has exposed and continues knowingly and intentionally to expose consumers within the State of California to cadmium. In particular, Earth Circle Foods Raw & Wildcrafted Dulse does not provide a clear and reasonable warning of the carcinogenic and reproductive hazards associated with the cadmium contained in the product.

Route of Exposure: Use of the product identified in this notice results in human exposures to cadmium. The primary route of exposure is ingestion.

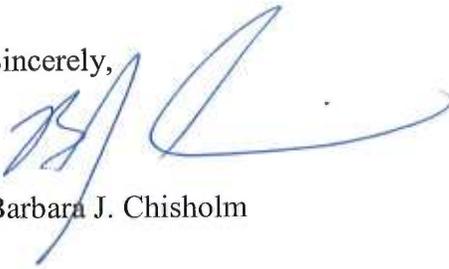
Duration of Violations: Each of these ongoing violations has occurred on every day since at least September 17, 2013; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listings at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" is also enclosed.

In keeping with its public interest mission and to rectify expeditiously these ongoing violations of California law, As You Sow is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with As You Sow by contacting Danielle Fugere, President and Chief Counsel, at: 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612, telephone: 510-735-8141. If you wish to contact me, my contact information is below:

Barbara J. Chisholm  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108  
Telephone: 415-421-7151  
Facsimile: 415-362-8064  
E-mail: bchisholm@altber.com

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. J. Chisholm', written over the word 'Sincerely,'.

Barbara J. Chisholm

Enclosures

cc: Attorney General (without "Proposition 65: A Summary" attachment) (with additional confidential factual information supporting Certificate of Merit)

District Attorneys for California's 58 Counties (see list attached to Certificate of Service) (without "Proposition 65: A Summary" attachment)

City Attorneys for the Cities of Los Angeles, San Diego, San Francisco, and San Jose (see list attached to Certificate of Service) (without "Proposition 65: A Summary" attachment)

## 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’s 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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Governor’s List.”*** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that 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 female or male reproductive systems or to the developing fetus. This list

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<sup>1</sup> 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>.

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](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 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 a 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 a Food.** Certain exposures to chemicals that occur in foods naturally (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 contaminant<sup>2</sup> 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 into 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.

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<sup>2</sup> 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 the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an 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.

## *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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

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

**CERTIFICATE OF MERIT**  
Health and Safety Code Section 25249.7(d)

I, Barbara J. Chisholm, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

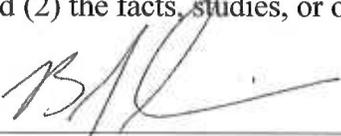
(2) I am the attorney for the noticing party, As You Sow.

(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 consultations, 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 plaintiffs' 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 and Safety Code section 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: September 17, 2014

  
\_\_\_\_\_  
Barbara J. Chisholm  
Attorney for As You Sow

**CERTIFICATE OF SERVICE**

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, San Francisco, California 94108.

On September 17, 2014, I served the following document(s):

**Notice of Violation of California Health & Safety Code §25249.5, *et seq.*, including attachment “Proposition 65: A Summary”; and Certificate of Merit.**

on the entity listed below and the individuals identified in the list attached hereto as Appendix A, by placing true copies thereof in sealed envelopes addressed as indicated below and in Appendix A for service by enclosing them in an envelope and placing the envelope for collection and mailing by United States Mail following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is planned for collection and mailing it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully paid.

**ADDRESSEES**

Earth Circle Organics  
355 Crown Point Circle, Ste. D  
Grass Valley, CA 95945

and

**Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”).**

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 17, 2014, at San Francisco, California.

  
\_\_\_\_\_  
Sally Mendez Arevalo

**CERTIFICATE OF SERVICE**

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, San Francisco, California 94108.

On September 17, 2014, I served the following document(s):

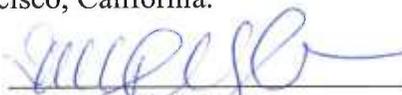
**Notice of Violation of California Health & Safety Code §25249.5, *et seq.*, including attachment “Proposition 65: A Summary”; and Certificate of Merit.**

on the entity listed below and the individuals identified in the list attached hereto as Appendix A, by placing true copies thereof in sealed envelopes addressed as indicated below and in Appendix A for service by enclosing them in an envelope and placing the envelope for collection and mailing by United States Mail following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is planned for collection and mailing it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully paid.

**ADDRESSEES**

**Individuals identified in list attached as Appendix A**

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 17, 2014, at San Francisco, California.

  
\_\_\_\_\_  
Sally Mendez Arevalo

## APPENDIX A

Kamala D. Harris,  
Attorney General for the State of California  
PO Box 944255  
Sacramento, CA 94244

The Honorable Bob Lee, District Attorney,  
SANTA CRUZ COUNTY  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Candice Hooper-Mancino,  
District Attorney,  
SAN BENITO COUNTY  
419 4th Street  
Hollister, CA 95023-3801

The Honorable Clifford Newell, District  
Attorney,  
NEVADA COUNTY  
201 Commercial Street  
Nevada City, CA 95959

The Honorable Dennis J. Herrera, Office of the  
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SAN FRANCISCO COUNTY  
City Hall, Room 234 1 Dr. Carlton B. Goodlett  
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San Francisco, CA 94102

The Honorable Edward Berberian, District  
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209 West Yosemite Avenue  
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The Honorable Tim Kendall, District Attorney,  
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The Honorable Jan Goldsmith, Office of the City  
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Woodland, CA 95695

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The Honorable Donald A. du Bain, District  
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The Honorable Jeffrey F. Rosen, District  
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San Jose, CA 95110

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Bakersfield, CA 93301

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Redding, CA 96001

The Honorable Gregg Cohen, District Attorney,  
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The Honorable James Kirk Andrus, District  
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Yreka, CA 96097

The Honorable Jan Scully, District Attorney,  
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Sacramento, CA 95814

The Honorable Barbara Yook, District Attorney,  
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891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable Birgit Fladager, District  
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STANISLAUS COUNTY  
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Roseville, CA 95678

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Santa Barbara, CA 93101

The Honorable Dean Flippo, District  
Attorney,  
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PO BOX 1131  
Salinas, CA 93902

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423 No. Washington Street  
Sonora, CA 95370

The Honorable Elizabeth Egan, District  
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2220 Tulare Street, Ste. 1000  
Fresno, CA 93721

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204 S. Court Street, Room 202  
Alturas, CA 96101

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San Luis Obispo, CA 93408

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Stockton, CA 95202

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255 N. Forbes Street  
Lakeport, CA 95453

The Honorable Lawrence Allen, District Attorney,  
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100 Courthouse Square, Second Floor, Post Office Box 457  
Downieville, CA 95936

The Honorable Michael Ramos, District Attorney,  
SAN BERNARDINO COUNTY  
303 W. Third Street, 6th Floor  
San Bernardino, CA 92415

The Honorable Patrick McGrath, District Attorney,  
YUBA COUNTY  
215 Fifth Street, Ste. 152  
Marysville, CA 95901

The Honorable Richard Doyle, Office of the City Attorney,  
City of San Jose  
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San Jose, CA 95113- 1905

The Honorable Robert J. Maloney, District Attorney,  
GLENN COUNTY  
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Willows, CA 95988

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3960 Orange Street  
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The Honorable Jackie Lacey, District Attorney's Office,  
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850 Bryant Street, Room 325  
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The Honorable C. David Eyster, District Attorney,  
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PO BOX 1000  
Ukiah,, CA 95482

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825 5th Street, 4th Floor  
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Susanville, CA 96130

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