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PETER D. NUSSBAUM
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P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
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FRED H. ALTSHULER
FOUNDING PARTNER EMERITUS
TONY LOPRESTI
FELLOW

Uploaded to Attorney General's website

September 25, 2015

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL INFORMATION PER
EVIDENCE CODE §1040**

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5, *ET SEQ.***

Kamala D. Harris
Attorney General for the State of California
c/o Proposition 65 Coordinator
Office of the Attorney General
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violation of California Health & Safety Code §25249.5 *et seq.* by Post Holdings, Inc. d/b/a Post Foods; Abbott Laboratories d/b/a Abbott Sales, Marketing & Distribution Co.; Atkins Nutritionals, Inc.; MET-Rx Substrate Technology, Inc.; NBTY Manufacturing, LLC; and Nestle USA, Inc.

Dear Attorney General Harris:

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 the entities listed below. This letter constitutes notice by As You Sow to the public enforcement agencies of these violations. Specifically, the identified entities have violated and are violating Section 25249.6, which provides that "[n]o person in the course of doing business shall



agencies of these violations. Specifically, the identified entities have violated and are 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, As You Sow intends to bring an enforcement action 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.

As You Sow is providing notice to the alleged violators listed below this same day, and copies of those notices are enclosed.

Alleged Violators: Post Holdings, Inc. d/b/a Post Foods
Abbott Laboratories d/b/a Abbott Sales, Marketing & Distribution Co.
Atkins Nutritionals, Inc.
MET-Rx Substrate Technology, Inc.
NBTY Manufacturing, LLC
Nestle USA, Inc.

Listed Chemical: These violations involve exposures to lead from the products listed below. On February 27, 1987, California listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Products: Protein bars manufactured, distributed, and/or sold by the above companies are the subject of this notice. Each product contains a chemical to which the alleged violators below are exposing consumers in California without reasonable warnings, including the following:

- A. Product of alleged violator Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution Co.: ZonePerfect Nutrition Bar Double Dark Chocolate
- B. Product of alleged violator Post Holdings, Inc. d/b/a Post Foods and Nestle USA, Inc.: PowerBar Performance Energy Bar Chocolate
- C. Product of alleged violator MET-Rx Substrate Technology, Inc. and NBTY Manufacturing, LLC: MET-Rx Protein Plus Protein Bar Chocolate Fudge Deluxe
- D. Product of alleged violator Atkins Nutritionals, Inc.: Atkins Chocolate Peanut Butter Bar

Violations: The alleged violators have knowingly and intentionally exposed and continue knowingly and intentionally to expose consumers within the State of California to lead. In particular, the products do not provide clear and reasonable warning of the reproductive hazards associated with lead.

Route of Exposure: Use of the product identified in this notice results in human exposures to lead through ingestion.

Duration of Violations: Each of these ongoing violations has occurred on every day since at least September 25, 2014; as well as every day since the products were introduced in the California marketplace and following the one-year anniversary dates of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto.

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:

Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151
Facsimile: 415-362-8064
E-mail: tlopresti@altshulerberzon.com

Sincerely,


Tony LoPresti

TL/sm
Enclosures

cc: District Attorneys for California's 58 Counties (see list attached to Certificate of Service)

City Attorneys for the Cities of Los Angeles, San Diego, San Francisco, and San Jose
(see list attached to Certificate of Service)

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 25, 2015, I served the following document(s):

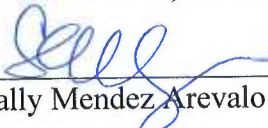
Notice of Violation of California Health & Safety Code §25249.5, et seq., including Confidential Attorney General Copy of Certificate of Merit.

on the entity listed below by e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service via electronic transmission through the Attorney General's electronic submission portal.

ADDRESSEES

Kamala D. Harris
c/o Prop 65 Coordinator
Post Office Box 70550
Oakland, California 94612-0550
Phone: (510) 873-6321
Fax: (510) 622-2270

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

ALTSHULER BERZON LLP

ATTORNEYS AT LAW

177 POST STREET, SUITE 300

SAN FRANCISCO, CALIFORNIA 94108

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P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
PEDER J. THOREEN
JONATHAN WEISSGLASS

September 25, 2015

***Via First Class Certified Mail
Return Receipt Requested***

Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution Co.
c/o C T Corporation System
818 West Seventh St., Suite 930
Los Angeles, CA 90017

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 a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution (the “Company” or “Abbott”). This letter constitutes notice by As You Sow to the Company of this violation. Specifically, Abbott 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, As You Sow intends to bring an enforcement action 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

Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution Co.
c/o C T Corporation System
September 25, 2015
Page 2

violation discussed in this letter. The public enforcement agencies that have been served with copies of this notice of violation are identified in the attached Certificate of Service.

Alleged Violator: The name of the alleged violator covered by this notice is Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution Co.

Listed Chemical: These violations involve exposures to lead from the product listed below. On February 27, 1987, California listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Product: The product that is the subject of this notice is ZonePerfect Nutrition Bar Double Dark Chocolate, which is manufactured, sold, and/or distributed by the Company.

Violation: The alleged violator knowingly and intentionally has exposed, and continues knowingly and intentionally to expose, consumers within the State of California to lead. In particular, ZonePerfect Nutrition Bar Double Dark Chocolate does not provide a clear and reasonable warning of the reproductive hazards associated with the lead contained in the product.

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

Duration of Violation: This ongoing violation has occurred on every day since at least September 25, 2014; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until a clear and reasonable warning is 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. If you wish to contact me, my contact information is as follows:

Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151
Facsimile: 415-362-8064

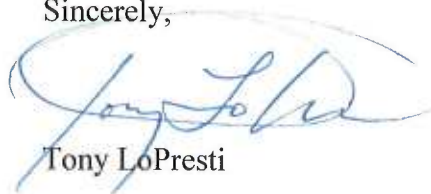
Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution Co.
c/o C T Corporation System
September 25, 2015
Page 3

E-mail: tlopresti@altshulerberzon.com

You may also 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.

I look forward to speaking with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony LoPresti", is written over a light blue circular stamp or watermark.

Tony LoPresti

TL/sm
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)

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

I, Tony LoPresti, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice 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 chemical that is 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 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 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 25, 2015



Tony LoPresti
Attorney for As You Sow

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. Please refer to~~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.

~~The text of 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, ~~requires the lead agency (OEHHA) Governor to publish~~ a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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>.

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 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~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~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 Periods. 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 full and part-time 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 (~~“carcinogens”~~), 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](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 naturally 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 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 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”

² See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that ~~such an~~ amount in drinking water.

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 ~~the regulations and in Title 11~~, 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 ~~of law~~ 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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. **You have actually taken the corrective steps that you have certified in this form.**
2. **The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
3. **The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
4. **This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. **You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
2. **Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action**

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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.

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, Suite 300, San Francisco, California 94108.

On September 25, 2015, 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 entities 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 certified mail with the United States Postal Service, with a return receipt requested. 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

Abbott Laboratories Inc. d/b/a Abbott Sales, Marketing & Distribution Co.
c/o CT Corporation System
818 West Seventh Street, 2nd Floor
Los Angeles, CA 90017

and

Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”); Attorney General’s copy delivered via website (without attachment “Proposition 65: A Summary” and with confidential Certificate of Merit)

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

APPENDIX A

The Honorable Nancy O'Malley, District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Richard Doyle, Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

The Honorable Dwayne R. Stewart, District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

The Honorable Donald A. Anderson, District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

The Honorable C. David Eyster, District Attorney
MENDOCINO COUNTY
100 North State Street, Room G-10 PO Box 1000
Ukiah,, CA 95482

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

The Honorable Candice Hooper, District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 0

The Honorable Tori Verber Salazar, District Attorney
SAN JOAQUIN COUNTY
222 E. Weber Avenue, Room 202
Stockton, CA 95202

The Honorable Stephen S. Carlton, District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

The Honorable Carl Adams, District Attorney
SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Jeff Reisig, District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

The Honorable Mike Feuer, City Attorney
City of Los Angeles
1945 S. Hill Suite 501
Los Angeles, CA 90007

The Honorable Todd Riebe, District Attorney
AMADOR COUNTY
708 Court Street
Jackson, CA 95642

The Honorable Mark A. Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

The Honorable Gilbert G. Otero, District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

The Honorable Jackie Lacey, District Attorney's Office
LOS ANGELES COUNTY
211 West Temple Street, Suite 1200
Los Angeles, CA 90012

The Honorable Jordan Funk, Interim District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

The Honorable Ronald "Scott" Owens, District Attorney
PLACER COUNTY
10810 Justice Center Drive Suite #240
Roseville, CA 95678

The Honorable Jan Goldsmith, Office of the City Attorney
SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable Stephen M. Wagstaffe, District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Kirk Andrus, District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

The Honorable Eric L. Heryford, District Attorney
TRINITY COUNTY
PO Box 310
Weaverville, CA 96093

ALPINE COUNTY The Honorable Karen Dustman, District Attorney
Markleeville, CA 96120

The Honorable John R. Poyner, District Attorney
COLUSA COUNTY
346 Fifth Street, Suite 101
Colusa, CA 95932

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

The Honorable Vernon Pierson, District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable Lisa Green, District Attorney
KERN COUNTY
1215 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

The Honorable Edward Berberian, District Attorney
MARIN COUNTY
3501 Civic Center Drive, Suite 130
San Rafael, CA 94903

The Honorable Dean D. Flippo, District Attorney
MONTEREY COUNTY
PO BOX 1131
Salinas, CA 93902

The Honorable Michael Hestrin, District Attorney
RIVERSIDE COUNTY
3960 Orange Street
Riverside, CA 92501

The Honorable Dennis Herrea, Office of the City Attorney
SAN FRANCISCO COUNTY
City Hall, Room 234 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 0

The Honorable Jeffrey F. Rosen, District Attorney
SANTA CLARA COUNTY
270 Grant Avenue
Palo Alto, CA 94306

The Honorable Jill Ravitch, District Attorney
SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

The Honorable Laura L. Krieg, District Attorney
TUOLUMNE COUNTY
2 South Green St.
Sonora, CA 0

The Honorable Michael Ramsey, District Attorney
BUTTE COUNTY
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable District Attorney
DEL NORTE COUNTY
981 H Street
Crescent City, CA 95531

APPENDIX A

The Honorable Lisa A. Smittcamp, District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

The Honorable Keith L. Fagundes, District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Thomas Cooke, District Attorney
MARIPOSA COUNTY
5101 Jones St., P.O. Box 730
Mariposa, CA 95338

The Honorable Gary Lieberstein, District Attorney
NAPA COUNTY
931 Parkway Mall PO Box 720
Napa, CA 94559

The Honorable Anne Marie Schubert, District Attorney
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

The Honorable George Gascón, District Attorney
SAN FRANCISCO COUNTY
850 Bryant Street, Room 322
San Francisco, CA 94103

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

The Honorable Birgit Fladager, District Attorney
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95354

The Honorable Gregory D. Totten, District Attorney
VENTURA COUNTY
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable Maggie Fleming, District Attorney
HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Stacey Montgomery, District Attorney
LASSEN COUNTY
220 S. Lassen Street
Susanville, CA 96130

The Honorable Larry Morse II, District Attorney
MERCED COUNTY
550 W. Main Street
Merced, CA 95340

The Honorable Tony Rackauckas, District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Michael Ramos, District Attorney
SAN BERNARDINO COUNTY
303 W. Third Street, 6th Floor
San Bernardino, CA 92415-7674

The Honorable Dan Dow, District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Lawrence Allen, District Attorney
SIERRA COUNTY
100 Courthouse Square, Room B1 P.O. Box 886
Downieville, CA 95936

The Honorable Gregg Cohen, District Attorney
TEHAMA COUNTY
444 Oak Street, Suite L
Red Bluff, CA 96080

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

The Honorable Tom Hardy, District Attorney
INYO COUNTY
PO Box D
Independence, CA 93526

The Honorable David Linn, District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Tim Kendall, District Attorney
MONO COUNTY
PO Box 617
Bridgeport, CA 93517

The Honorable David Hollister, District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Bonnie Dumanis, District Attorney
SAN DIEGO COUNTY
330 W. Broadway
San Diego, CA 92101

The Honorable Joyce E. Dudley, District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Krishna A. Abrams, District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

The Honorable Tim Ward, District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291-4593

Kamala D. Harris Attorney General for the State of California
PO Box 944255
Sacramento, CA 94244-2550

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STACEY M. LEYTON
MATTHEW J. MURRAY
PETER D. NUSSBAUM
ZOE PALITZ
P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
PEDER J. THOREEN
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FRED H. ALTSHULER
FOUNDING PARTNER EMERITUS

TONY LOPRESTI
FELLOW

ALTSHULER BERZON LLP

ATTORNEYS AT LAW

177 POST STREET, SUITE 300

SAN FRANCISCO, CALIFORNIA 94108

(415) 421-7151

FAX (415) 362-8064

www.altshulerberzon.com

September 25, 2015

***Via First Class Certified Mail
Return Receipt Requested***

Atkins Nutritionals, Inc.
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr. Ste 150N
Sacramento, CA 95833

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 a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by Atkins Nutritionals, Inc. (the “Company” or “Atkins”). This letter constitutes notice by As You Sow to the Company of this violation. Specifically, Atkins 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, As You Sow intends to bring an enforcement action 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 violation discussed in this letter. The public enforcement agencies that have been served with copies of this notice of violation are identified in the attached Certificate of Service.

Alleged Violator: The name of the alleged violator covered by this notice is Atkins Nutritionals, Inc.

Listed Chemical: These violations involve exposures to lead from the product listed below. On February 27, 1987, California listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Product: The product that is the subject of this notice is Atkins Chocolate Peanut Butter Bar, which is manufactured, sold, and/or distributed by the Company.

Violation: The alleged violator knowingly and intentionally has exposed and continues knowingly and intentionally to expose consumers within the State of California to lead. In particular, Atkins Chocolate Peanut Butter Bar does not provide a clear and reasonable warning of the reproductive hazards associated with the lead contained in the product.

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

Duration of Violation: This ongoing violation has occurred on every day since at least September 25, 2014; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until a clear and reasonable warning is 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. If you wish to contact me, my contact information is as follows:

Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151
Facsimile: 415-362-8064
E-mail: tlopresti@altshulerberzon.com

You may also 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.

Atkins Nutritionals, Inc.
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service
September 25, 2015
Page 3

I look forward to speaking with you.

Sincerely,



Tony LoPresti

TL/sm
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)

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

I, Tony LoPresti, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice 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 chemical that is 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 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 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 25, 2015



Tony LoPresti
Attorney for As You Sow

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. Please refer to~~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.

The text of 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, ~~requires the lead agency (OEHHA) Governor to publish~~ a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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>.

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 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~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~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 Periods. 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 full and part-time 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 (~~“carcinogens”~~), 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](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 naturally 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 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 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”

² See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that ~~such an~~ amount in drinking water.

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 ~~the regulations and in Title 11~~, 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 ~~of law~~ 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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form.**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action**

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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.

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, Suite 300, San Francisco, California 94108.

On September 25, 2015, 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 entities 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 certified mail with the United States Postal Service, with a return receipt requested. 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

Atkins Nutritionals, Inc.
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

and

Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”); Attorney General’s copy delivered via website (without attachment “Proposition 65: A Summary” and with confidential Certificate of Merit)

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

APPENDIX A

The Honorable Nancy O'Malley, District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Richard Doyle, Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

The Honorable Dwayne R. Stewart, District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

The Honorable Donald A. Anderson, District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

The Honorable C. David Eyster, District Attorney
MENDOCINO COUNTY
100 North State Street, Room G-10 PO Box 1000
Ukiah,, CA 95482

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

The Honorable Candice Hooper, District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 0

The Honorable Tori Verber Salazar, District Attorney
SAN JOAQUIN COUNTY
222 E. Weber Avenue, Room 202
Stockton, CA 95202

The Honorable Stephen S. Carlton, District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

The Honorable Carl Adams, District Attorney
SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Jeff Reisig, District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

The Honorable Mike Feuer, City Attorney
City of Los Angeles
1945 S. Hill Suite 501
Los Angeles, CA 90007

The Honorable Todd Riebe, District Attorney
AMADOR COUNTY
708 Court Street
Jackson, CA 95642

The Honorable Mark A. Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

The Honorable Gilbert G. Otero, District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

The Honorable Jackie Lacey, District Attorney's Office
LOS ANGELES COUNTY
211 West Temple Street, Suite 1200
Los Angeles, CA 90012

The Honorable Jordan Funk, Interim District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

The Honorable Ronald "Scott" Owens, District Attorney
PLACER COUNTY
10810 Justice Center Drive Suite #240
Roseville, CA 95678

The Honorable Jan Goldsmith, Office of the City Attorney
SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable Stephen M. Wagstaffe, District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Kirk Andrus, District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

The Honorable Eric L. Heryford, District Attorney
TRINITY COUNTY
PO Box 310
Weaverville, CA 96093

ALPINE COUNTY The Honorable Karen Dustman, District Attorney
Markleeville, CA 96120

The Honorable John R. Poyner, District Attorney
COLUSA COUNTY
346 Fifth Street, Suite 101
Colusa, CA 95932

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

The Honorable Vernon Pierson, District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable Lisa Green, District Attorney
KERN COUNTY
1215 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

The Honorable Edward Berberian, District Attorney
MARIN COUNTY
3501 Civic Center Drive, Suite 130
San Rafael, CA 94903

The Honorable Dean D. Flippo, District Attorney
MONTEREY COUNTY
PO BOX 1131
Salinas, CA 93902

The Honorable Michael Hestrin, District Attorney
RIVERSIDE COUNTY
3960 Orange Street
Riverside, CA 92501

The Honorable Dennis Herrea, Office of the City Attorney
SAN FRANCISCO COUNTY
City Hall, Room 234 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 0

The Honorable Jeffrey F. Rosen, District Attorney
SANTA CLARA COUNTY
270 Grant Avenue
Palo Alto, CA 94306

The Honorable Jill Ravitch, District Attorney
SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

The Honorable Laura L. Krieg, District Attorney
TUOLUMNE COUNTY
2 South Green St.
Sonora, CA 0

The Honorable Michael Ramsey, District Attorney
BUTTE COUNTY
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable District Attorney
DEL NORTE COUNTY
981 H Street
Crescent City, CA 95531

APPENDIX A

The Honorable Lisa A. Smittcamp, District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

The Honorable Keith L. Fagundes, District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Thomas Cooke, District Attorney
MARIPOSA COUNTY
5101 Jones St., P.O. Box 730
Mariposa, CA 95338

The Honorable Gary Lieberstein, District Attorney
NAPA COUNTY
931 Parkway Mall PO Box 720
Napa, CA 94559

The Honorable Anne Marie Schubert, District Attorney
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

The Honorable George Gascón, District Attorney
SAN FRANCISCO COUNTY
850 Bryant Street, Room 322
San Francisco, CA 94103

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

The Honorable Birgit Fladager, District Attorney
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95354

The Honorable Gregory D. Totten, District Attorney
VENTURA COUNTY
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable Maggie Fleming, District Attorney
HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Stacey Montgomery, District Attorney
LASSEN COUNTY
220 S. Lassen Street
Susanville, CA 96130

The Honorable Larry Morse II, District Attorney
MERCED COUNTY
550 W. Main Street
Merced, CA 95340

The Honorable Tony Rackauckas, District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Michael Ramos, District Attorney
SAN BERNARDINO COUNTY
303 W. Third Street, 6th Floor
San Bernardino, CA 92415-7674

The Honorable Dan Dow, District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Lawrence Allen, District Attorney
SIERRA COUNTY
100 Courthouse Square, Room B1 P.O. Box 886
Downieville, CA 95936

The Honorable Gregg Cohen, District Attorney
TEHAMA COUNTY
444 Oak Street, Suite L
Red Bluff, CA 96080

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

The Honorable Tom Hardy, District Attorney
INYO COUNTY
PO Box D
Independence, CA 93526

The Honorable David Linn, District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Tim Kendall, District Attorney
MONO COUNTY
PO Box 617
Bridgeport, CA 93517

The Honorable David Hollister, District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Bonnie Dumanis, District Attorney
SAN DIEGO COUNTY
330 W. Broadway
San Diego, CA 92101

The Honorable Joyce E. Dudley, District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Krishna A. Abrams, District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

The Honorable Tim Ward, District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291-4593

Kamala D. Harris Attorney General for the State of California
PO Box 944255
Sacramento, CA 94244-2550

STEPHEN P. BERZON
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EILEEN B. GOLDSMITH
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DANIELLE E. LEONARD
STACEY M. LEYTON
MATTHEW J. MURRAY
PETER D. NUSSBAUM
ZOE PALITZ
P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
PEDER J. THOREEN
JONATHAN WEISSGLASS

FRED H. ALTSHULER
FOUNDING PARTNER EMERITUS

TONY LOPRESTI
FELLOW

ALTSHULER BERZON LLP
ATTORNEYS AT LAW
177 POST STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94108
(415) 421-7151
FAX (415) 362-8064
www.altshulerberzon.com

September 25, 2015

*Via First Class Certified Mail
Return Receipt Requested*

MET-Rx Substrate Technology, Inc.
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr. Ste 150N
Sacramento, CA 95833

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 a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by MET-Rx Substrate Technology, Inc. (the “Company” or “MET-Rx”). This letter constitutes notice by As You Sow to the Company of this violation. Specifically, MET-Rx 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, As You Sow intends to bring an enforcement action 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 violation 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 MET-Rx Substrate Technology, Inc.

Listed Chemical: These violations involve exposures to lead from the product listed below. On February 27, 1987, California officially listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Product: The product that is the subject of this notice is MET-Rx Protein Plus Protein Bar Chocolate Fudge Deluxe, which is manufactured, sold, and/or distributed by the Company.

Violation: The alleged violator knowingly and intentionally has exposed and continues knowingly and intentionally to expose consumers within the State of California to lead. In particular, MET-Rx Protein Plus Protein Bar Chocolate Fudge Deluxe does not provide a clear and reasonable warning of the reproductive hazards associated with the lead contained in the product.

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

Duration of Violation: This ongoing violation has occurred on every day since at least September 25, 2014; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until a clear and reasonable warning is 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. If you wish to contact me, my contact information is as follows:

Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151
Facsimile: 415-362-8064
E-mail: tlopresti@altshulerberzon.com

MET-Rx Substrate Technology, Inc.
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service
September 25, 2015
Page 3

You may also 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.

I look forward to speaking with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony LoPresti", is enclosed within a light blue oval. The signature is fluid and cursive.

Tony LoPresti

TL/sm
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)

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

I, Tony LoPresti, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice 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 chemical that is 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 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 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 25, 2015


Tony LoPresti
Attorney for As You Sow

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. Please refer to~~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.

~~The text of 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, ~~requires the lead agency (OEHHA) Governor to publish~~ a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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>.

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 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~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~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 Periods. 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 full and part-time 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 (~~“carcinogens”~~), 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](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 naturally 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 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 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”

² See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that ~~such an~~ amount in drinking water.

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 ~~the regulations and in Title 11~~, 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 ~~of law~~ 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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form.**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action**

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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.

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, Suite 300, San Francisco, California 94108.

On September 25, 2015, 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 entities 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 certified mail with the United States Postal Service, with a return receipt requested. 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.

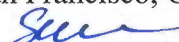
ADDRESSEES

MET-Rx Substrate Technology, Inc.
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr. Ste 150N
Sacramento, CA 95833

and

Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”); Attorney General’s copy delivered via website (without attachment “Proposition 65: A Summary” and with confidential Certificate of Merit)

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

APPENDIX A

The Honorable Nancy O'Malley, District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Richard Doyle, Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

The Honorable Dwayne R. Stewart, District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

The Honorable Donald A. Anderson, District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

The Honorable C. David Eyster, District Attorney
MENDOCINO COUNTY
100 North State Street, Room G-10 PO Box 1000
Ukiah,, CA 95482

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

The Honorable Candice Hooper, District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 0

The Honorable Tori Verber Salazar, District Attorney
SAN JOAQUIN COUNTY
222 E. Weber Avenue, Room 202
Stockton, CA 95202

The Honorable Stephen S. Carlton, District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

The Honorable Carl Adams, District Attorney
SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Jeff Reisig, District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

The Honorable Mike Feuer, City Attorney
City of Los Angeles
1945 S. Hill Suite 501
Los Angeles, CA 90007

The Honorable Todd Riebe, District Attorney
AMADOR COUNTY
708 Court Street
Jackson, CA 95642

The Honorable Mark A. Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

The Honorable Gilbert G. Otero, District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

The Honorable Jackie Lacey, District Attorney's Office
LOS ANGELES COUNTY
211 West Temple Street, Suite 1200
Los Angeles, CA 90012

The Honorable Jordan Funk, Interim District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

The Honorable Ronald "Scott" Owens, District Attorney
PLACER COUNTY
10810 Justice Center Drive Suite #240
Roseville, CA 95678

The Honorable Jan Goldsmith, Office of the City Attorney
SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable Stephen M. Wagstaffe, District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Kirk Andrus, District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

The Honorable Eric L. Heryford, District Attorney
TRINITY COUNTY
PO Box 310
Weaverville, CA 96093

ALPINE COUNTY The Honorable Karen
Dustman, District Attorney
Markleeville, CA 96120

The Honorable John R. Poyner, District Attorney
COLUSA COUNTY
346 Fifth Street, Suite 101
Colusa, CA 95932

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

The Honorable Vernon Pierson, District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable Lisa Green, District Attorney
KERN COUNTY
1215 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

The Honorable Edward Berberian, District Attorney
MARIN COUNTY
3501 Civic Center Drive, Suite 130
San Rafael, CA 94903

The Honorable Dean D. Flippo, District Attorney
MONTEREY COUNTY
PO BOX 1131
Salinas, CA 93902

The Honorable Michael Hestrin, District Attorney
RIVERSIDE COUNTY
3960 Orange Street
Riverside, CA 92501

The Honorable Dennis Herrea, Office of the City Attorney
SAN FRANCISCO COUNTY
City Hall, Room 234 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 0

The Honorable Jeffrey F. Rosen, District Attorney
SANTA CLARA COUNTY
270 Grant Avenue
Palo Alto, CA 94306

The Honorable Jill Ravitch, District Attorney
SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

The Honorable Laura L. Krieg, District Attorney
TUOLUMNE COUNTY
2 South Green St.
Sonora, CA 0

The Honorable Michael Ramsey, District Attorney
BUTTE COUNTY
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable District Attorney
DEL NORTE COUNTY
981 H Street
Crescent City, CA 95531

APPENDIX A

The Honorable Lisa A. Smittcamp, District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

The Honorable Keith L. Fagundes, District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Thomas Cooke, District Attorney
MARIPOSA COUNTY
5101 Jones St., P.O. Box 730
Mariposa, CA 95338

The Honorable Gary Lieberstein, District Attorney
NAPA COUNTY
931 Parkway Mall PO Box 720
Napa, CA 94559

The Honorable Anne Marie Schubert, District Attorney
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

The Honorable George Gascón, District Attorney
SAN FRANCISCO COUNTY
850 Bryant Street, Room 322
San Francisco, CA 94103

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

The Honorable Birgit Fladager, District Attorney
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95354

The Honorable Gregory D. Totten, District Attorney
VENTURA COUNTY
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable Maggie Fleming, District Attorney
HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Stacey Montgomery, District Attorney
LASSEN COUNTY
220 S. Lassen Street
Susanville, CA 96130

The Honorable Larry Morse II, District Attorney
MERCED COUNTY
550 W. Main Street
Merced, CA 95340

The Honorable Tony Rackauckas, District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Michael Ramos, District Attorney
SAN BERNARDINO COUNTY
303 W. Third Street, 6th Floor
San Bernardino, CA 92415-7674

The Honorable Dan Dow, District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Lawrence Allen, District Attorney
SIERRA COUNTY
100 Courthouse Square, Room B1 P.O. Box 886
Downieville, CA 95936

The Honorable Gregg Cohen, District Attorney
TEHAMA COUNTY
444 Oak Street, Suite L
Red Bluff, CA 96080

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

The Honorable Tom Hardy, District Attorney
INYO COUNTY
PO Box D
Independence, CA 93526

The Honorable David Linn, District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Tim Kendall, District Attorney
MONO COUNTY
PO Box 617
Bridgeport, CA 93517

The Honorable David Hollister, District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Bonnie Dumanis, District Attorney
SAN DIEGO COUNTY
330 W. Broadway
San Diego, CA 92101

The Honorable Joyce E. Dudley, District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Krishna A. Abrams, District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

The Honorable Tim Ward, District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291-4593

Kamala D. Harris Attorney General for the State of California
PO Box 944255
Sacramento, CA 94244-2550

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MATTHEW J. MURRAY
PETER D. NUSSBAUM
ZOE PALITZ
P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
PEDER J. THOREEN
JONATHAN WEISSGLASS

September 25, 2015

***Via First Class Certified Mail
Return Receipt Requested***

NBTY Manufacturing, LLC
c/o Corporation Service Company d/b/a in California as CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr. Ste 150N
Sacramento, CA 95833

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 a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by NBTY Manufacturing, LLC (the “Company” or “NBTY”). This letter constitutes notice by As You Sow to the Company of this violation. Specifically, NBTY 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, As You Sow intends to bring an enforcement action 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

violation 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 NBTY Manufacturing, LLC.

Listed Chemical: These violations involve exposures to lead from the product listed below. On February 27, 1987, California officially listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Product: The product that is the subject of this notice is MET-Rx Protein Plus Protein Bar Chocolate Fudge Deluxe, which is manufactured, sold, and/or distributed by the Company.

Violation: The alleged violator knowingly and intentionally has exposed and continues knowingly and intentionally to expose consumers within the State of California to lead. In particular, MET-Rx Protein Plus Protein Bar Chocolate Fudge Deluxe does not provide a clear and reasonable warning of the reproductive hazards associated with the lead contained in the product.

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

Duration of Violation: This ongoing violation has occurred on every day since at least September 25, 2014; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until a clear and reasonable warning is 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. If you wish to contact me, my contact information is as follows:

Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151

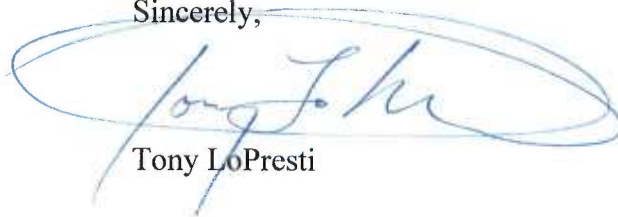
NBTY Manufacturing, LLC
c/o Corporation Service Company d/b/a in California as CSC-Lawyers Incorporating Service
September 25, 2015
Page 3

Facsimile: 415-362-8064
E-mail: tlopresti@altshulerberzon.com

You may also 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.

I look forward to speaking with you.

Sincerely,



Tony LoPresti

TL/sm
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)

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

I, Tony LoPresti, hereby declare:

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

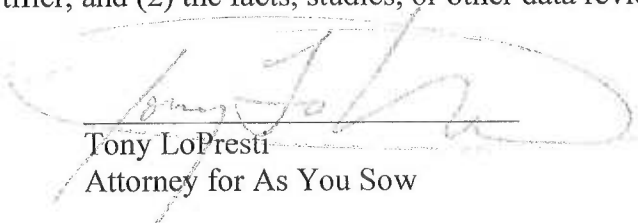
(2) I am the attorney for the noticing party, As You Sow.

(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 chemical that is 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 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 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 25, 2015



Tony LoPresti
Attorney for As You Sow

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. Please refer to~~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.

~~The text of 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, ~~requires the lead agency (OEHHA) Governor to publish~~ a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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>.

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 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~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~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 Periods. 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 full and part-time 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 (~~“carcinogens”~~), 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](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 naturally 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 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 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”

² See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that ~~such an~~ amount in drinking water.

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 ~~the regulations and in Title 11~~, 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 ~~of law~~ 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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form.**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action**

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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.

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, Suite 300, San Francisco, California 94108.

On September 25, 2015, 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 entities 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 certified mail with the United States Postal Service, with a return receipt requested. 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.

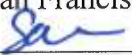
ADDRESSEES

NBTY Manufacturing, LLC
c/o Corporation Service Company d/b/a in California as CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr. Ste 150N
Sacramento, CA 95833

and

Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”); Attorney General’s copy delivered via website (without attachment “Proposition 65: A Summary” and with confidential Certificate of Merit)

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

APPENDIX A

The Honorable Nancy O'Malley, District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Richard Doyle, Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

The Honorable Dwayne R. Stewart, District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

The Honorable Donald A. Anderson, District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

The Honorable C. David Eyster, District Attorney
MENDOCINO COUNTY
100 North State Street, Room G-10 PO Box 1000
Ukiah,, CA 95482

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

The Honorable Candice Hooper, District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 0

The Honorable Tori Verber Salazar, District Attorney
SAN JOAQUIN COUNTY
222 E. Weber Avenue, Room 202
Stockton, CA 95202

The Honorable Stephen S. Carlton, District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

The Honorable Carl Adams, District Attorney
SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Jeff Reisig, District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

The Honorable Mike Feuer, City Attorney
City of Los Angeles
1945 S. Hill Suite 501
Los Angeles, CA 90007

The Honorable Todd Riebe, District Attorney
AMADOR COUNTY
708 Court Street
Jackson, CA 95642

The Honorable Mark A. Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

The Honorable Gilbert G. Otero, District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

The Honorable Jackie Lacey, District Attorney's Office
LOS ANGELES COUNTY
211 West Temple Street, Suite 1200
Los Angeles, CA 90012

The Honorable Jordan Funk, Interim District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

The Honorable Ronald "Scott" Owens, District Attorney
PLACER COUNTY
10810 Justice Center Drive Suite #240
Roseville, CA 95678

The Honorable Jan Goldsmith, Office of the City Attorney
SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable Stephen M. Wagstaffe, District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Kirk Andrus, District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

The Honorable Eric L. Heryford, District Attorney
TRINITY COUNTY
PO Box 310
Weaverville, CA 96093

ALPINE COUNTY The Honorable Karen
Dustman, District Attorney
Markleeville, CA 96120

The Honorable John R. Poyner, District Attorney
COLUSA COUNTY
346 Fifth Street, Suite 101
Colusa, CA 95932

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

The Honorable Vernon Pierson, District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable Lisa Green, District Attorney
KERN COUNTY
1215 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

The Honorable Edward Berberian, District Attorney
MARIN COUNTY
3501 Civic Center Drive, Suite 130
San Rafael, CA 94903

The Honorable Dean D. Flippo, District Attorney
MONTEREY COUNTY
PO BOX 1131
Salinas, CA 93902

The Honorable Michael Hestrin, District Attorney
RIVERSIDE COUNTY
3960 Orange Street
Riverside, CA 92501

The Honorable Dennis Herrea, Office of the City Attorney
SAN FRANCISCO COUNTY
City Hall, Room 234 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 0

The Honorable Jeffrey F. Rosen, District Attorney
SANTA CLARA COUNTY
270 Grant Avenue
Palo Alto, CA 94306

The Honorable Jill Ravitch, District Attorney
SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

The Honorable Laura L. Krieg, District Attorney
TUOLUMNE COUNTY
2 South Green St.
Sonora, CA 0

The Honorable Michael Ramsey, District Attorney
BUTTE COUNTY
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable District Attorney
DEL NORTE COUNTY
981 H Street
Crescent City, CA 95531

APPENDIX A

The Honorable Lisa A. Smittcamp, District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

The Honorable Keith L. Fagundes, District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Thomas Cooke, District Attorney
MARIPOSA COUNTY
5101 Jones St., P.O. Box 730
Mariposa, CA 95338

The Honorable Gary Lieberstein, District Attorney
NAPA COUNTY
931 Parkway Mall PO Box 720
Napa, CA 94559

The Honorable Anne Marie Schubert, District Attorney
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

The Honorable George Gascón, District Attorney
SAN FRANCISCO COUNTY
850 Bryant Street, Room 322
San Francisco, CA 94103

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

The Honorable Birgit Fladager, District Attorney
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95354

The Honorable Gregory D. Totten, District Attorney
VENTURA COUNTY
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable Maggie Fleming, District Attorney
HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Stacey Montgomery, District Attorney
LASSEN COUNTY
220 S. Lassen Street
Susanville, CA 96130

The Honorable Larry Morse II, District Attorney
MERCED COUNTY
550 W. Main Street
Merced, CA 95340

The Honorable Tony Rackauckas, District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Michael Ramos, District Attorney
SAN BERNARDINO COUNTY
303 W. Third Street, 6th Floor
San Bernardino, CA 92415-7674

The Honorable Dan Dow, District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Lawrence Allen, District Attorney
SIERRA COUNTY
100 Courthouse Square, Room B1 P.O. Box 886
Downieville, CA 95936

The Honorable Gregg Cohen, District Attorney
TEHAMA COUNTY
444 Oak Street, Suite L
Red Bluff, CA 96080

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

The Honorable Tom Hardy, District Attorney
INYO COUNTY
PO Box D
Independence, CA 93526

The Honorable David Linn, District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Tim Kendall, District Attorney
MONO COUNTY
PO Box 617
Bridgeport, CA 93517

The Honorable David Hollister, District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Bonnie Dumanis, District Attorney
SAN DIEGO COUNTY
330 W. Broadway
San Diego, CA 92101

The Honorable Joyce E. Dudley, District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Krishna A. Abrams, District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

The Honorable Tim Ward, District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291-4593

Kamala D. Harris Attorney General for the State of California
PO Box 944255
Sacramento, CA 94244-2550

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EVE H. CERVANTEZ
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JEFFREY B. DEMAIN
JAMES M. FINBERG
KRISTIN M. GARCÍA
EILEEN B. GOLDSMITH
SCOTT A. KRONLAND
DANIELLE E. LEONARD
STACEY M. LEYTON
MATTHEW J. MURRAY
PETER D. NUSSBAUM
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P. CASEY PITTS
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PEDER J. THOREEN
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ATTORNEYS AT LAW
177 POST STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94108
(415) 421-7151
FAX (415) 362-8064
www.altshulerberzon.com

FRED H. ALTSHULER
FOUNDING PARTNER EMERITUS
TONY LOPRESTI
FELLOW

September 25, 2015

***Via First Class Certified Mail
Return Receipt Requested***

Nestle USA, Inc.
c/o C T Corporation System
818 West Seventh St., Ste 930
Los Angeles, CA 90017

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 a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by Nestle USA, Inc. (the “Company” or “Nestle”). This letter constitutes notice by As You Sow to the Company of this violation. Specifically, Nestle 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, As You Sow intends to bring an enforcement action 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 violation 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 Nestle USA, Inc.

Listed Chemical: This violation involves exposures to lead from the product listed below. On February 27, 1987, California officially listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Product: The product that is the subject of this notice is PowerBar Performance Energy Bar Chocolate, which is manufactured, sold, and/or distributed by the Company.

Violation: The alleged violator knowingly and intentionally has exposed and continues knowingly and intentionally to expose consumers within the State of California to lead. In particular, PowerBar Performance Energy Bar Chocolate does not provide a clear and reasonable warning of the reproductive hazards associated with the lead contained in the product.

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

Duration of Violation: This ongoing violation has occurred on every day since at least September 25, 2014; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until a clear and reasonable warning is 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. If you wish to contact me, my contact information is as follows:

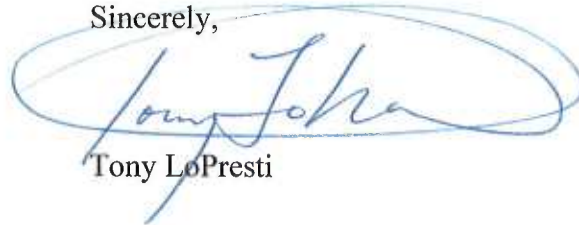
Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151
Facsimile: 415-362-8064
E-mail: tlopresti@altshulerberzon.com

Nestle USA, Inc.
c/o C T Corporation System
September 25, 2015
Page 3

You may also 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.

I look forward to speaking with you.

Sincerely,



Tony LoPresti

TL/sm
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)

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

I, Tony LoPresti, hereby declare:

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

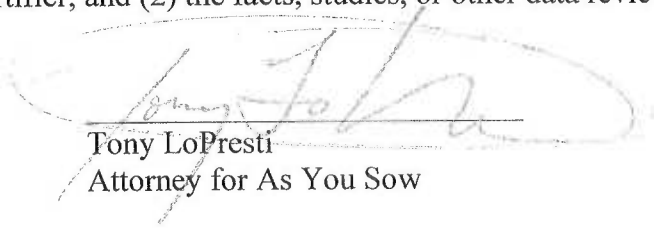
(2) I am the attorney for the noticing party, As You Sow.

(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 chemical that is 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 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 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 25, 2015



Tony LoPresti
Attorney for As You Sow

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. Please refer to~~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.

~~The text of 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, ~~requires the lead agency (OEHHA) Governor to publish~~ a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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>.

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 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~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~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 Periods. 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 full and part-time 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 (~~“carcinogens”~~), 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](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 naturally 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 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 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”

² See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that ~~such an~~ amount in drinking water.

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 ~~the regulations and in Title 11~~, 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 ~~of law~~ 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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. **You have actually taken the corrective steps that you have certified in this form.**
2. **The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
3. **The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
4. **This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. **You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
2. **Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action**

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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.

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, Suite 300, San Francisco, California 94108.

On September 25, 2015, 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 entities 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 certified mail with the United States Postal Service, with a return receipt requested. 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

Nestle USA, Inc.
c/o C T Corporation System
818 West Seventh St. 2nd Fl
Los Angeles, CA 90017

and

Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”); Attorney General’s copy delivered via website (without attachment “Proposition 65: A Summary” and with confidential Certificate of Merit)

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

APPENDIX A

The Honorable Nancy O'Malley, District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Richard Doyle, Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

The Honorable Dwayne R. Stewart, District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

The Honorable Donald A. Anderson, District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

The Honorable C. David Eyster, District Attorney
MENDOCINO COUNTY
100 North State Street, Room G-10 PO Box 1000
Ukiah,, CA 95482

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

The Honorable Candice Hooper, District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 0

The Honorable Tori Verber Salazar, District Attorney
SAN JOAQUIN COUNTY
222 E. Weber Avenue, Room 202
Stockton, CA 95202

The Honorable Stephen S. Carlton, District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

The Honorable Carl Adams, District Attorney
SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Jeff Reisig, District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

The Honorable Mike Feuer, City Attorney
City of Los Angeles
1945 S. Hill Suite 501
Los Angeles, CA 90007

The Honorable Todd Riebe, District Attorney
AMADOR COUNTY
708 Court Street
Jackson, CA 95642

The Honorable Mark A. Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

The Honorable Gilbert G. Otero, District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

The Honorable Jackie Lacey, District Attorney's Office
LOS ANGELES COUNTY
211 West Temple Street, Suite 1200
Los Angeles, CA 90012

The Honorable Jordan Funk, Interim District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

The Honorable Ronald "Scott" Owens, District Attorney
PLACER COUNTY
10810 Justice Center Drive Suite #240
Roseville, CA 95678

The Honorable Jan Goldsmith, Office of the City Attorney
SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable Stephen M. Wagstaffe, District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Kirk Andrus, District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

The Honorable Eric L. Heryford, District Attorney
TRINITY COUNTY
PO Box 310
Weaverville, CA 96093

ALPINE COUNTY The Honorable Karen Dustman, District Attorney
Markleeville, CA 96120

The Honorable John R. Poyner, District Attorney
COLUSA COUNTY
346 Fifth Street, Suite 101
Colusa, CA 95932

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

The Honorable Vernon Pierson, District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable Lisa Green, District Attorney
KERN COUNTY
1215 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

The Honorable Edward Berberian, District Attorney
MARIN COUNTY
3501 Civic Center Drive, Suite 130
San Rafael, CA 94903

The Honorable Dean D. Flippo, District Attorney
MONTEREY COUNTY
PO BOX 1131
Salinas, CA 93902

The Honorable Michael Hestrin, District Attorney
RIVERSIDE COUNTY
3960 Orange Street
Riverside, CA 92501

The Honorable Dennis Herrea, Office of the City Attorney
SAN FRANCISCO COUNTY
City Hall, Room 234 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 0

The Honorable Jeffrey F. Rosen, District Attorney
SANTA CLARA COUNTY
270 Grant Avenue
Palo Alto, CA 94306

The Honorable Jill Ravitch, District Attorney
SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

The Honorable Laura L. Krieg, District Attorney
TUOLUMNE COUNTY
2 South Green St.
Sonora, CA 0

The Honorable Michael Ramsey, District Attorney
BUTTE COUNTY
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable District Attorney
DEL NORTE COUNTY
981 H Street
Crescent City, CA 95531

APPENDIX A

The Honorable Lisa A. Smittcamp, District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

The Honorable Keith L. Fagundes, District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Thomas Cooke, District Attorney
MARIPOSA COUNTY
5101 Jones St., P.O. Box 730
Mariposa, CA 95338

The Honorable Gary Lieberstein, District Attorney
NAPA COUNTY
931 Parkway Mall PO Box 720
Napa, CA 94559

The Honorable Anne Marie Schubert, District Attorney
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

The Honorable George Gascón, District Attorney
SAN FRANCISCO COUNTY
850 Bryant Street, Room 322
San Francisco, CA 94103

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

The Honorable Birgit Fladager, District Attorney
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95354

The Honorable Gregory D. Totten, District Attorney
VENTURA COUNTY
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable Maggie Fleming, District Attorney
HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Stacey Montgomery, District Attorney
LASSEN COUNTY
220 S. Lassen Street
Susanville, CA 96130

The Honorable Larry Morse II, District Attorney
MERCED COUNTY
550 W. Main Street
Merced, CA 95340

The Honorable Tony Rackauckas, District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Michael Ramos, District Attorney
SAN BERNARDINO COUNTY
303 W. Third Street, 6th Floor
San Bernardino, CA 92415-7674

The Honorable Dan Dow, District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Lawrence Allen, District Attorney
SIERRA COUNTY
100 Courthouse Square, Room B1 P.O. Box 886
Downieville, CA 95936

The Honorable Gregg Cohen, District Attorney
TEHAMA COUNTY
444 Oak Street, Suite L
Red Bluff, CA 96080

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

The Honorable Tom Hardy, District Attorney
INYO COUNTY
PO Box D
Independence, CA 93526

The Honorable David Linn, District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Tim Kendall, District Attorney
MONO COUNTY
PO Box 617
Bridgeport, CA 93517

The Honorable David Hollister, District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Bonnie Dumanis, District Attorney
SAN DIEGO COUNTY
330 W. Broadway
San Diego, CA 92101

The Honorable Joyce E. Dudley, District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Krishna A. Abrams, District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

The Honorable Tim Ward, District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291-4593

Kamala D. Harris Attorney General for the State of California
PO Box 944255
Sacramento, CA 94244-2550

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JEFFREY B. DEMAIN
JAMES M. FINBERG
KRISTIN M. GARCÍA
EILEEN B. GOLDSMITH
SCOTT A. KRONLAND
DANIELLE E. LEONARD
STACEY M. LEYTON
MATTHEW J. MURRAY
PETER D. NUSSBAUM
ZOE PALITZ
P. CASEY PITTS
DANIEL T. PURTELL
MICHAEL RUBIN
PEDER J. THOREEN
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SAN FRANCISCO, CALIFORNIA 94108
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FAX (415) 362-8064
www.altshulerberzon.com

FRED H. ALTSHULER
FOUNDING PARTNER EMERITUS
TONY LOPRESTI
FELLOW

September 25, 2015

*Via First Class Certified Mail
Return Receipt Requested*

Post Holdings, Inc d/b/a Post Foods
c/o Corporate Creations Network Inc.
1430 Truxtun Ave., 5th Fl.
Bakersfield, CA 93301

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 a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 *et seq.*, by Post Holdings, Inc. d/b/a Post Foods (the “Company” or “Post Foods”). This letter constitutes notice by As You Sow to the Company of this violation. Specifically, Post Foods 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, As You Sow intends to bring an enforcement action 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 violation 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 Post Holdings, Inc. d/b/a Post Foods.

Listed Chemical: This violation involves exposures to lead from the product listed below. On February 27, 1987, California officially listed lead as a chemical known to the State to cause reproductive toxicity.

Consumer Product: The product that is the subject of this notice is PowerBar Performance Energy Bar Chocolate, which is manufactured, sold, and/or distributed by the Company.

Violation: The alleged violator knowingly and intentionally has exposed and continues knowingly and intentionally to expose consumers within the State of California to lead. In particular, PowerBar Performance Energy Bar Chocolate does not provide a clear and reasonable warning of the reproductive hazards associated with the lead contained in the product.

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

Duration of Violation: This ongoing violation has occurred on every day since at least September 25, 2014; as well as every day since the product was introduced in the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until a clear and reasonable warning is 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.

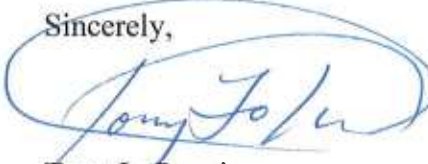
In keeping with its public interest mission and to rectify expeditiously these ongoing violations of California law, As You Sow is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. If you wish to contact me, my contact information is as follows:

Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415-421-7151
Facsimile: 415-362-8064
E-mail: tlopresti@altshulerberzon.com

Post Holdings, Inc d/b/a Post Foods
c/o Corporate Creations Network Inc.
September 25, 2015
Page 3

You may also 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.

I look forward to speaking with you.

Sincerely,

Tony LoPresti

TL/sm
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)

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

I, Tony LoPresti, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice 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 chemical that is 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 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 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 25, 2015



Tony LoPresti
Attorney for As You Sow

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. Please refer to~~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.

~~The text of 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 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, ~~requires the lead agency (OEHHA) Governor to publish~~ a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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>.

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 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~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~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 Periods. 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 full and part-time 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 (~~“carcinogens”~~), 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](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 naturally 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 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 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”

² See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that ~~such an~~ amount in drinking water.

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 ~~the regulations and in Title 11~~, 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 ~~of law~~ 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 private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form.**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.

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.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action**

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

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 2014

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.

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, Suite 300, San Francisco, California 94108.

On September 25, 2015, 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 entities 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 certified mail with the United States Postal Service, with a return receipt requested. 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

Post Holdings, Inc d/b/a Post Foods
c/o Corporate Creations Network Inc.
1430 Truxtun Ave., 5th Fl.
Bakersfield, CA 93301

and

Individuals identified in list attached as Appendix A (without attachment “Proposition 65: A Summary”); Attorney General’s copy delivered via website (without attachment “Proposition 65: A Summary” and with confidential Certificate of Merit)

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed September 25, 2015, at San Francisco, California.



Sally Mendez Arevalo

APPENDIX A

The Honorable Nancy O'Malley, District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
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Willows, CA 95988

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Lakeport, CA 95453

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MENDOCINO COUNTY
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Ukiah,, CA 95482

The Honorable Clifford Newell, District Attorney
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APPENDIX A

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