Melvin B. Pearlston
Senior Counsel

Pacific Justice
CENTER

Of Counsel
Robert B . Hancock

June 1, 2016

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

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

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

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

Transition Nutrition, Inc.

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

Divine Organics Raw Cacao Powder – Cadmium

On May 1, 1997, the State of California officially listed cadmium as a chemical known to cause developmental toxicity, and male reproductive toxicity.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 1, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either

50 California Street, Suite 1500, San Francisco, California 94111
Telephone : (415) 310-1940 • Facsimile : (415) 354-3508

removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. During the course of the relevant period herein, Violator placed the subject language on the label of the product in question, a true and correct copy of which is attached hereto as Exhibit A:

CAL PROP 65 WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproduction harm. For more information and clarity go to our website.

The label further contains Violator's website: www.divineorganics.com The home page of this site contains a prominent link captioned "CA PROP 65: Why is it on my superfood?" (Exhibit B hereto.) Clicking through links the user to www.divineorganics.com/california-prop-65-warning-why-is-it-on-my-superfood/ attached as Exhibit C, as it appeared as of April 20, 2016. This webpage contains a number of statements which are false and/or misleading, such as to dilute the efficacy of the language appearing on the label, rendering it neither "clear," nor "reasonable." Those statements include, but are not limited to the following:

(a) "DIVINE ORGANICS does not require a warning at this time, but we will voluntarily comply with Prop 65 in following [sic] products when sold in California:"

CACAO PRODUCTS
GOJIBERRIES (according to testing)
MACA
MESQUITE

(b) "The standard in California is more stringent that what is required at the U.S. federal level, and by other governments including Canada and the European Union."

(c) "Chemicals that may trigger this requirement, such as Lead, Cadmium, Nickel and Arsenic, have been found in products of some of the other companies within the superfood industry."

(d) "Though these elements are naturally present in the fertile soil where they are metabolized by plants and play a vital part in a balanced and nutrient-dense diet, these same elements can be extracted and isolated, as they are used in a concentrated toxic form for paints, chemicals, cleaners, solvents, glues, even pharmaceuticals. Prop 65 requires a warning that the product might contain a very small amount of this chemical, despite its origin."

(e) "Under Cal Prop 65, the State of California has determined a safety zone for these chemicals. This was calculated by identifying the level of exposure that has been shown to have no observable effect and then dividing that level by 1,000, to provide a very large margin of safety. This margin has been proven in various cases to be calculated so low, that it has conflicted when the minerals are occurring naturally in the soil."

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products, including correcting and/or retracting any false and/or misleading statements disseminated; (2)

reformulate the identified products so as to eliminate further exposures to the identified chemicals; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58th Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

Robert B. Hancock

Attachments
Certificate of Merit
Certificate of Service
OEHHA Summary (to Violators only)
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

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

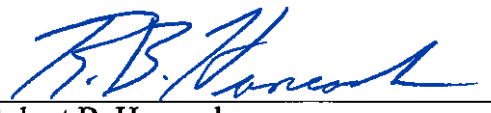
2. I am an attorney for the noticing party.

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

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

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

Dated: June 1, 2016



Robert B. Hancock

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On June 1, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET. SEQ.*; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Transition Nutrition, Inc.
20 Pamaron Way
Novato, CA 94949

On June 1, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(l)** on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550
https://oag.ca.gov/prop65/add-60-day-notice

On June 1, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, I effected service by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail. As to those parties having an e-mail addressed listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on June 1, 2016.

Robert B. Hancock

Service List

District Attorney,
Alameda County
1225 Fallon St., Rm. 900
Oakland, CA 94612

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

District Attorney,
Amador County
708 Court St., #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Dr.
Oroville, CA 95965

District Attorney,
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney,
Colusa County
346 Fifth St. Ste. 101
Colusa, CA 95932

District Attorney,
Contra Costa County
900 Ward St.
Martinez, CA 94553
[illegible]assini@contracostada.org

District Attorney,
Del Norte County
450 H St., Ste. 171
Crescent City, CA 95531

District Attorney,
El Dorado County
515 Main St.
Placerville, CA 95667

District Attorney,
Fresno County
2220 Tulare St., #1000
Fresno, CA 93721

District Attorney,
Glenn County
P.O. Box 430
Willows, CA 95988

District Attorney,
Humboldt County
825 5th St.
Eureka, CA 95501

District Attorney,
Imperial County
940 West Main St., Ste. 102
El Centre, CA 92243

District Attorney, Inyo County
230 W. Line St.
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Ave.
Bakersfield, CA 93301

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

District Attorney, Lake County
255 N. Forbes St.
Lakeport, CA 95453

District Attorney,
Lassen County
220 S. Lassen St., Ste. 8
Susanville, CA 96130

District Attorney,
Los Angeles County
210 W. Temple St., Ste. 1800
Los Angeles, CA 90012

District Attorney,
Madera County
209 West Yosemite Ave.
Madera, CA 93637

District Attorney,
Marin County
3501 Civic Center Dr., Rm. 130
San Rafael, CA 94903

District Attorney,
Mariposa County
P.O. Box 730
Mariposa, CA 95338

District Attorney,
Mendocino County
P.O. Box 1000
Ukiah, CA 95482

District Attorney,
Merced County
2222 M St.
Merced, CA 95340

District Attorney,
Modoc County
204 S Court St., Rm. 202
Alturas, CA 96101-4020

District Attorney,
Mono County
P.O. Box 617
Bridgeport, CA 93517

District Attorney,
Monterey County
P.O. Box 1131
Salinas, CA 93902
[illegible]

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559
[illegible]

District Attorney,
Nevada County
201 Commercial St.
Nevada City, CA 95959

District Attorney,
Orange County
401 Civic Center Dr. West
Santa Ana, CA 92701

District Attorney,
Placer County
10810 Justice Center Dr.,
Ste. 240
Roseville, CA 95678

District Attorney,
Plumas County
520 Main St., Rm. 404
Quincy, CA 95971

District Attorney,
Riverside County
3072 Orange St.
Riverside, CA 92501
Prop65@rivcoda.org

District Attorney,
Sacramento County
901 "G" St.
Sacramento, CA 95814

District Attorney,
San Benito County
419 Fourth St., 2nd Fl.
Hollister, CA 95023

District Attorney,
San Bernardino County
316 N. Mountain View Ave.
San Bernardino, CA 92415

District Attorney,
San Diego County
330 W. Broadway, Rm. 1300
San Diego, CA 92101

District Attorney,
San Francisco County
850 Bryant St., Rm. 322
San Francisco, CA 94103

District Attorney,
San Joaquin County
P.O. Box 990
Stockton, CA 95201

District Attorney,
San Luis Obispo County
1035 Palm St. Rm. 450
San Luis Obispo, CA 93408

District Attorney,
San Mateo County
400 County Ctr., 3rd Fl.
Redwood City, CA 94063

District Attorney,
Santa Barbara County
1112 Santa Barbara St.
Santa Barbara, CA 93101

District Attorney,
Santa Clara County
70 West Hedding St.
San Jose, CA 95110
[illegible]

District Attorney,
Santa Cruz County
701 Ocean St., Rm. 200
Santa Cruz, CA 95060

District Attorney,
Shasta County
1355 West St.
Redding, CA 96001

District Attorney,
Sierra County
PO Box 457
Downieville, CA 95936

District Attorney,
Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney,
Solano County
675 Texas St., Ste. 4500
Fairfield, CA 94533

District Attorney,
Sonoma County
600 Administration Dr.,
Rm. 212J
Santa Rosa, CA 95403
[illegible]

District Attorney,
Stanislaus County
832 12th St., Ste. 300
Modesto, CA 95353

District Attorney,
Sutter County
446 Second St.
Yuba City, CA 95991

District Attorney,
Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney,
Trinity County
P.O. Box 310
Weaverville, CA 96093

District Attorney,
Tulare County
221 S. Mooney Ave., Rm. 224
Visalia, CA 93291
Prop65@co.tulare.ca.us

District Attorney,
Tuolumne County
423 N. Washington St.
Sonora, CA 95370

District Attorney,
Ventura County
800 S. Victoria Ave.
Ventura, CA 93009
[illegible]

District Attorney, Yolo County
301 2nd St.
Woodland, CA 95695
[illegible]

District Attorney, Yuba County
215 Fifth St., Ste. 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main St., Rm. 800
Los Angeles, CA 90012

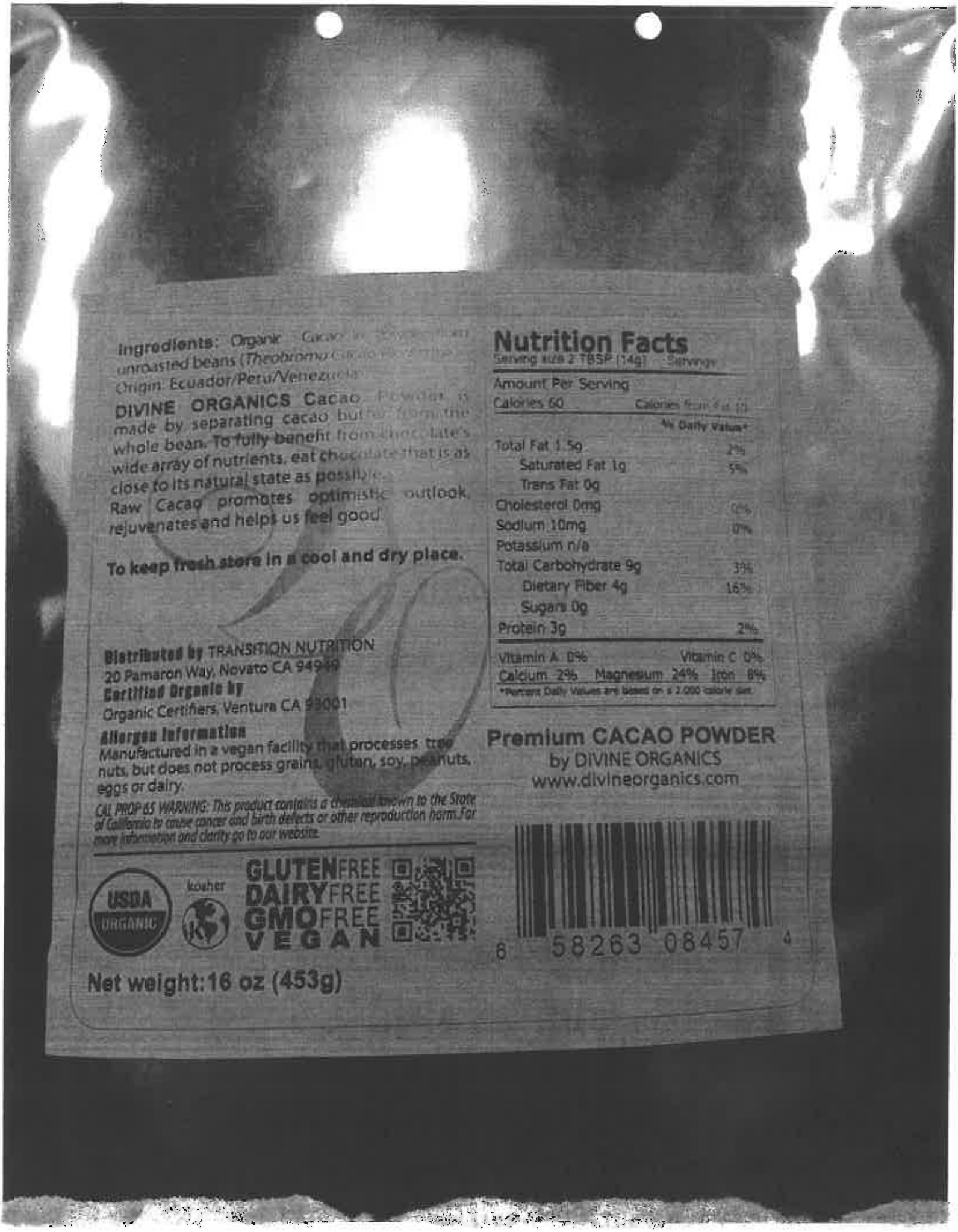
Office of the City Attorney
City of Sacramento
915 I St., 4th Fl.
Sacramento, CA 95814

San Diego City Attorney's
Office
1200 3rd Ave., Ste. 1620
San Diego, CA 92101

San Francisco City Attorney's
Office
City Hall, Rm. 234
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 E. Santa Clara St.,
16th Fl.
San Jose, CA 95113

EXHIBIT A



Ingredients: Organic Cacao [illegible] unroasted beans (*Theobroma Cacao*)
Origin: Ecuador/Peru/Venezuela

DIVINE ORGANICS Cacao Powder is made by separating cacao butter from the whole bean. To fully benefit from chocolate's wide array of nutrients, eat chocolate that is as close to its natural state as possible. Raw Cacao promotes optimistic outlook, rejuvenates and helps us feel good.

To keep fresh store in a cool and dry place.

Distributed by TRANSITION NUTRITION
20 Pamaron Way, Novato CA 94949
Certified Organic by
Organic Certifiers, Ventura CA 93001

Allergen Information
Manufactured in a vegan facility that processes tree nuts, but does not process grains, gluten, soy, peanuts, eggs or dairy.

CAL PROP 65 WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproduction harm. For more information and clarity go to our website.

USDA ORGANIC

kosher

GLUTEN FREE
DAIRY FREE
GMO FREE
VEGAN

Net weight: 16 oz (453g)

Nutrition Facts

Serving size 2 TBSP (14g) Servings

Amount Per Serving	
Calories 60	Calories from Fat 10
	% Daily Value*
Total Fat 1.5g	2%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 10mg	0%
Potassium n/a	
Total Carbohydrate 9g	3%
Dietary Fiber 4g	16%
Sugars 0g	
Protein 3g	2%

Vitamin A 0% Vitamin C 0%
Calcium 2% Magnesium 24% Iron 8%
*Percent Daily Values are based on a 2,000 calorie diet.

Premium CACAO POWDER
by DIVINE ORGANICS
www.divineorganics.com

8 58263 08457 4

EXHIBIT B

Welcome to the world of Divine Organics!

Our mission is to provide the finest organic, chemical free, sustainable farm grown superfoods. We are passionate to provide you with foods in its purest state to maintain vibrant health and high energy. Ultimately, it is only 'living energy' that can increase awareness and raise the overall consciousness, creating the possibility for more peace and harmony on Earth: 'LIFE FROM LIFE, ENERGY FROM ENERGY'.

Join Our Newsletter: Go

What's new:

FEATURED RECIPES:
Raw & Sweet Pili Nut Treats
Pili-Nut-Chia-Crackers

INTERVIEW with Dr. Gabriel Cousens and David Kaplan: about a raw vegan lifestyle and meditation.

CA PROP 65:
Why is it on my Superfood?

Raw Cacao

Cacao or Cocoa (Theobroma Cacao): A small evergreen tree native to the deep tropical region of the Americas. The scientific name Theobroma means "food of the gods". In its raw state, it contains a wide array of unique properties, antioxidants and minerals that enhance both physical and mental well-being. It has an incredibly rich supply of magnesium, along with other essential minerals: calcium, zinc, iron, copper and potassium. The majority of antioxidants are water-soluble and when the fat is removed from the cacao bean the ORAC scores almost double. The lure of chocolate can be overwhelming for some people. Cocoa contains *theobromine* (a chemical related to caffeine). The sugar in chocolate releases serotonin (a brain chemical related to a positive sense of well-being). Despite its physical properties chocolate is not a physically addictive food, however, some people may find themselves psychologically addicted to

EXHIBIT C

CALIFORNIA PROP 65 WARNING: Why is it on my Superfood?

Posted on November 24, 2014

Cal Prop 65 is California's Safe Drinking Water and Toxic Enforcement Act of 1986. Companies are required to place a warning label on any product they sell within California if it exceeds the level, that the State has established as risk free for a list of over eight hundred chemicals. These standards are specific to the state of California only. The standard in California is more stringent than what is required at the U.S. federal level, and by other governments including Canada and the European Union.

Under Cal Prop 65, the State of California has determined a safety zone for these chemicals. This was calculated by identifying the level of exposure that has been shown to have no observable effect and then dividing that level by 1,000, to provide a very large margin of safety. This margin has been proven in various cases to be calculated so low, that it has conflicted when the minerals are occurring naturally in the soil. California is the only state that requires warning labels at this low of a level.

DIVINE ORGANICS nuts, berries and superfood ingredients are 100% pure, derived solely from pristine, strong, healthy plants. They are grown with organic agricultural processes; some of our products are wild-crafted. To the best of our knowledge, no chemicals are used to grow it, nor are they added to it, or introduced during the processing of these products.

Chemicals that may trigger this requirement, such as Lead, Cadmium, Nickel and Arsenic, have been found in products of some of the other companies within the superfood industry.
Though these elements are naturally present in the fertile soil where they are metabolized by plants and play a vital part in a balanced and nutrient-dense diet, the same elements can be extracted and isolated, as they are used in a concentrated toxic form for paints, chemicals, cleaners, solvents, glues, even pharmaceuticals. Prop 65 requires a warning that the product might contain a very small amount of this chemical, despite to its origin.

DIVINE ORGANICS does not require a warning at this time, but we will voluntarily comply with Prop 65 in following products when sold in California:

CACAO PRODUCTS
GOJIBERRIES (according to testing)
MACA
MESQUITE

Dear customer, please contact us if you have any questions and concerns to the subject. We are happy to help!