



Environmental Research Center

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

October 15, 2024

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

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Excelsior Nutrition Inc, individually and dba 4Excelsior

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

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

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

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

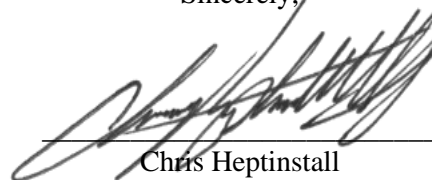
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 9, 2018*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

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

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

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

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

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

I, Chris Heptinstall, hereby declare:

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

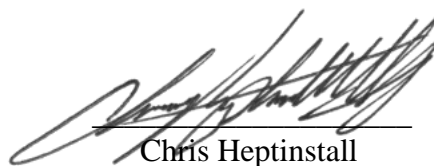
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

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

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

Dated: October 15, 2024


Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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James Clinchard, Assistant District Attorney
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EDCDAPROP65@edcda.us

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

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

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

Lori E. Frugoli, District Attorney
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3501 Civic Center Drive, Suite 145
San Rafael, CA 94903
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Kimberly Lewis, District Attorney
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550 West Main St
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Prop65@countyofmerced.com

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

Allison Haley, District Attorney
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1127 First Street, Ste C
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Nevada City, CA 95959
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300 N Flower St
Santa Ana, CA 92703
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10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

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

Paul E. Zellerbach, District Attorney
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Sacramento, CA 95814
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Summer Stephan, District Attorney
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330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

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

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

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

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

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

Jeffrey S. Rosell, District Attorney
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Prop65DA@santacruzcounty.us

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DAConsumer.Environmental@sjcda.org

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

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

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

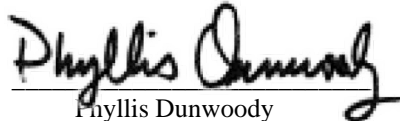
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

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

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

On October 15, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

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


Phyllis Dunwoody

Service List

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

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

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

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

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

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

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

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

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

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

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

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Madera, CA 93637

District Attorney, Mendocino
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Ukiah, CA 95482

District Attorney, Modoc
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Alturas, CA 96101-4020

District Attorney, Mono
County
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Bridgeport, CA 93517

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Mateo
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Redwood City, CA 94063

District Attorney, Shasta
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Redding, CA 96001

District Attorney, Sierra
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District Attorney, Siskiyou
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Yreka, CA 96097

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Fairfield, CA 94533

District Attorney, Stanislaus
County
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Modesto, CA 95354

District Attorney, Sutter
County
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Yuba City, CA 95991

District Attorney, Tehama
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District Attorney, Trinity
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Sonora, CA 95370

District Attorney, Yuba
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Marysville, CA 95901

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Los Angeles, CA 90012