



## Environmental Research Center

3111 Camino Del Rio North, Suite 400

San Diego, CA 92108

619-500-3090

October 15, 2024

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

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**Excelsior Nutrition Inc, individually and dba 4Excelsior**

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

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

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

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

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least November 18, 2019\*, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

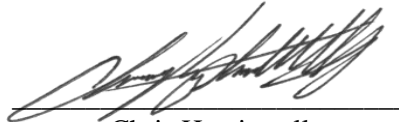
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified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

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

Sincerely,



Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

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

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

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

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

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

I, Chris Heptinstall, hereby declare:

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

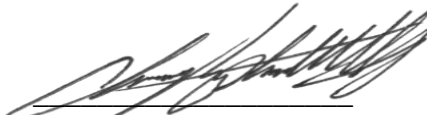
2. I am the Executive Director for the noticing party, Environmental Research Center.

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

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

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

Dated: October 15, 2024

  
Chris Heptinstall

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

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

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

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdca.org

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

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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, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

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

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

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

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

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

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

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

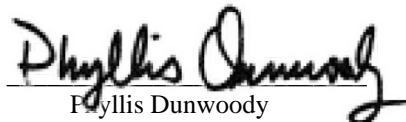
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

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

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

  
Phyllis Dunwoody

**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> 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 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
300 South G Street, Ste 300  
Madera, CA 93637

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
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Bridgeport, CA 93517

District Attorney, San Benito  
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Hollister, CA 95023

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303 West Third Street  
San Bernadino, CA 92415

District Attorney, San Mateo  
County  
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Redwood City, CA 94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

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

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

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
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Red Bluff, CA 96080

District Attorney, Trinity  
County  
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Weaverville, CA 96093

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

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

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