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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
23 COUNTY OF ALAMEDA

24 ENVIRONMENTAL RESEARCH  
25 CENTER, INC. a non-profit California  
26 corporation,

27 Plaintiff,

28 v.

29 BLUEBONNET NUTRITION  
30 CORPORATION, a Texas corporation

31 Defendant.

CASE NO. RG16829845

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 2, 2016

Trial Date: November 27, 2017

Judge: Hon. Brad Seligman

Dept.: 30

32 **1. INTRODUCTION**

33 **1.1** On September 2, 2016, Plaintiff Environmental Research Center, Inc.  
34 (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this

1 action by filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant  
2 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition  
3 65”), against BLUEBONNET NUTRITION CORPORATION (“BLUEBONNET”). Plaintiff  
4 thereafter filed a first amended complaint (“FAC”) to add allegations regarding Cadmium  
5 exposure. In this action, ERC alleges that a number of products manufactured, distributed or  
6 sold by BLUEBONNET contain lead and/or cadmium, chemicals listed under Proposition 65 as  
7 carcinogens and reproductive toxins, and expose consumers to these chemicals at levels  
8 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a  
9 “Covered Product” or collectively as “Covered Products”) are:

- 10 • **Bluebonnet Nutrition Corporation 100% Natural Dual-Action Protein**
- 11 **Whey + Casein Natural Chocolate Flavor**
- 12 • **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein**
- 13 **Vanilla**
- 14 • **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein**
- 15 **Chocolate Mocha**
- 16 • **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein**
- 17 **Chocolate**
- 18 • **Bluebonnet Nutrition Corporation Super Earth OrganicGreens**

19 1.2 ERC and BLUEBONNET are hereinafter referred to individually as a “Party” or  
20 collectively as the “Parties.”

21 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
22 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
23 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
24 and encouraging corporate responsibility.

25 1.4 For purposes of this Consent Judgment, ERC alleges BLUEBONNET is a business  
26 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
27 “person in the course of business” within the meaning of Proposition 65. BLUEBONNET  
28 manufactures, distributes and sells the Covered Products.

1           **1.5**     The FAC is based on allegations contained in ERC’s Notice of Violation dated  
2 December 16, 2015 and ERC’s Notice of Violation dated March 24, 2017, both of which were  
3 served on the California Attorney General, other public enforcers, and BLUEBONNET (the  
4 “Notices”). A true and correct copy of the Notices are attached as Exhibit A and are hereby  
5 incorporated by reference. As of the Effective Date of this Consent Judgment, more than 60  
6 days have passed since the Notices were mailed to BLUEBONNET and public enforcers and  
7 uploaded to the Attorney General’s website, and no designated governmental entity has filed a  
8 complaint against BLUEBONNET with regard to the Covered Products or the alleged  
9 violations.

10           **1.6**     ERC’s Notices and FAC allege that use of the Covered Products expose persons  
11 in California to lead and/or cadmium without first providing clear and reasonable warnings in  
12 violation of California Health and Safety Code section 25249.6. BLUEBONNET denies all  
13 material allegations contained in the Notices and FAC.

14           **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
15 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
16 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
17 be construed as an admission by any of the Parties or by any of their respective officers,  
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
19 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
20 violation of law.

21           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
23 current or future legal proceeding unrelated to these proceedings.

24           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered as  
25 a Judgment by this Court.

26           **2.     JURISDICTION AND VENUE**

27           For purposes of this Consent Judgment and any further court action that may become  
28 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter

1 jurisdiction over the allegations of violations contained in the FAC, personal jurisdiction over  
2 BLUEBONNET as to the acts alleged in the FAC, that venue is proper in Alameda County, and  
3 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
4 claims up through and including 90 days from the Effective Date (the "Compliance Date") which  
5 were or could have been asserted in this action based on the facts alleged in the Notice and FAC.

6 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

7 **3.1** Beginning on the Compliance Date, BLUEBONNET shall be permanently  
8 enjoined from manufacturing for sale in the State of California, "Distributing into the State of  
9 California", or directly selling in the State of California, any Covered Product which exposes a  
10 person to a "Daily Cadmium Exposure Level" of 4.1 micrograms per day of cadmium when  
11 the maximum suggested dose is taken as directed on the Covered Product's label, or a "Daily  
12 Lead Exposure Level" of more than 0.5 micrograms per day of lead when the maximum  
13 suggested dose is taken as directed on the Covered Product's label, after subtracting out the  
14 amount of lead deemed "naturally occurring" (for purpose of this Consent Judgment only) for  
15 each ingredient listed in Table 3.1 below that is present in the Covered Product, unless it meets  
16 the warning requirements under Section 3.2. If BLUEBONNET seeks to utilize the allowances  
17 in the Table 3.1, it must, prior to entry of the consent judgment, provide ERC with a list of all  
18 ingredients in the Covered Products subject to confidentiality including the percentage of each  
19 ingredient of that particular Covered Product so that ERC may be able to calculate the daily  
20 exposure based on the allowances contained in the table.

21 **Table 3.1**

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram

1	Magnesium Carbonate	0.332 micrograms/gram
2	Magnesium Hydroxide	0.4 micrograms/gram
3	Zinc Gluconate	0.8 micrograms/gram
4	Potassium Chloride	1.1 micrograms/gram
5	Cocoa Powder	1.0 micrograms/gram

7  
8           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
9 of California” shall mean to directly ship a Covered Product into California for sale in  
10 California or to sell a Covered Product to a distributor or retailer that BLUEBONNET knows  
11 will sell the Covered Product in California.

12           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
13 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
14 micrograms of lead per gram of product minus the amount of lead deemed “naturally  
15 occurring” for each ingredient listed in Table 3.1 above, multiplied by grams of product per  
16 serving of the product (using the largest serving size appearing on the product label), multiplied  
17 by servings of the product per day (using the largest number of servings in a recommended  
18 dosage appearing on the product label), which equals micrograms of lead exposure per day.  
19 The “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be  
20 calculated using the following formula: micrograms of cadmium per gram of product,  
21 multiplied by grams of product per serving of the product (using the largest serving size  
22 appearing on the product label), multiplied by servings of the product per day (using the largest  
23 number of servings in a recommended dosage appearing on the product label), which equals  
24 micrograms of cadmium exposure per day.

25           **3.2 Clear and Reasonable Warnings**

26           If BLUEBONNET is required to provide a warning pursuant to Section 3.1, the following  
27 warning must be utilized (“Warning”):

28           **WARNING:** Consuming this product can expose you to chemicals including [lead] [and]  
[cadmium] which is [are] known to the State of California to cause [cancer and] birth

1 defects or other reproductive harm. For more information go to  
2 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

3 BLUEBONNET shall use the phrase “cancer and” in the warning only if the maximum daily dose  
4 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
5 the quality control methodology set forth in Section 3.4. As identified in the brackets, the warning  
6 shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the  
7 Covered Products.

8 **3.2.1** For sales in retail stores, the Warning may be provided by either of the  
9 following methods, (1) Identifying Signs and Designated Symbol, as described below in sections  
10 3.2.1.1 through 3.2.1.2.3, or (2) Other Clear and Reasonable Warnings in Retail Stores, as  
11 described below in section 3.2.2.

12 **3.2.1.1 Covered Products Sold in Retail Stores: Sign.**

13 **3.2.1.1.1 Form of Sign.** A Sign shall be rectangular and at least 36 square inches  
14 in size, with the word “WARNING” centered one-half of an inch from the top of the sign in one-  
15 half inch capital letters. For the body of the warning message, left and right margins of at least  
16 one-half of an inch, and a bottom margin of at least one-half inch shall be observed. The Symbol  
17 must be at least one inch high. Larger signs shall bear substantially the same proportions of type  
18 size and spacing to sign dimension as a sign that is 36 square inches in size.

19 **3.2.1.1.2 Placement of Sign.** Signs shall be placed by the Compliance  
20 Date in each California establishment in which any of the Covered Products are available for sale  
21 to the public. Signs shall not be covered or obscured, and shall be placed and displayed in a  
22 manner rendering them likely to be read and understood by an ordinary individual prior to  
23 purchase. At least one Sign shall be posted in each aisle or on each shelf or display where the  
24 Covered Products for which the warning is being provided are offered or displayed for sale,  
25 unless the retail establishment has less than 7,500 square feet of retail space and no more than two  
26 cash registers, in which case the Sign may be posted at each cash register. Additional signs shall  
27 be posted as are necessary to assure that any potential purchaser of Covered Products would be  
28 likely to see a Sign prior to purchase.

1                   3.2.1.1.3 BLUEBONNET shall provide an exemplar Sign to the central  
2 purchasing office for all distributors and retail establishments with whom BLUEBONNET  
3 transacts business for sale of the Covered Products in California that require a warning.  
4 BLUEBONNET shall send to each such entity instructions, substantially similar to the sample  
5 letter attached hereto as Exhibit B, to post the Sign (in the case of a retailer) or request that that  
6 retailers post the Sign (in the case of a distributor) in accordance with this Consent Judgment, and  
7 shall request a response to BLUEBONNET with a written acknowledgment that the Sign will be  
8 posted (in the case of a retailer), or that the distributor shall request retailers to post the Sign,  
9 within 30 days of receipt of the instructions. BLUEBONNET shall send a follow-up  
10 communication, substantially similar to the sample letter attached as Exhibit C, to entities who  
11 were sent the original instructions and who did not timely send an acknowledgment.  
12 BLUEBONNET shall maintain files demonstrating compliance with this provision, including the  
13 communications sent and receipts of any acknowledgments from retailers and distributors. If  
14 BLUEBONNET learns that a retailer, distributor, or other person has failed to, or failed to request  
15 another entity to, post or maintain the Sign in accordance with section 3.2.1.1.2 above,  
16 BLUEBONNET shall notify such retailer, distributor or other person that it has ten (10) business  
17 days to post or maintain the Sign in accordance with section 3.2.1.1.2 above. If after such notice  
18 the retailer, distributor or other person fails to post or maintain the Sign in accordance with  
19 section 3.2.1.1.2 above BLUEBONNET shall stop providing Covered Products to such retailer,  
20 distributor, or other person until it verifies that compliance with the terms of subsection 3.2.1.1.2  
21 is achieved.

22                   3.2.1.1.4 If BLUEBONNET complies with the terms of subsection 3.2.1.1.3 above, it  
23 shall not be found to have violated this Consent Judgment where a retail store, distributor, or  
24 other person fails to, or fails to request another entity to, post or maintain the Sign in accordance  
25 with this Consent Judgment.

26                   3.2.1.2 Covered Products Sold in Retail Stores: Symbol. The designated Symbol  
27 (“Symbol”) shall be the Symbol Shown on Exhibit D and shall appear as shown in Exhibit D with  
28 black “Prop 65” and “!” text, black border, and yellow background, wherever it is displayed. The

1 Symbol shall be prominently displayed by the Compliance Date and with such conspicuousness,  
2 as compared with other words, statements, designs, or devices used at the point the Covered  
3 Products are offered for sale, as to render the Symbol likely to be seen by an ordinary individual  
4 prior to purchase. The Symbol shall be displayed on or adjacent to the Covered Products in any  
5 one or more of the following locations:

6                   3.2.1.2.1 The Symbol may be permanently affixed to or prominently  
7 printed on any placards, signs, or shelf stickers adjacent to the Covered Products that identify the  
8 name or price of the Covered Products displayed, in which case the Symbol shall be no less than  
9 one-quarter inch (0.25 inch) high; or

10                   3.2.1.2.2 The Symbol may be permanently affixed to or printed on the  
11 outside packaging or container of each unit of the Covered Products, in which case the Symbol  
12 must be large enough that the characters in the Symbol are in a type size no smaller than 6 point,  
13 and in no case shall the Symbol be less than one-quarter inch (0.25 inch) high.

14                   3.2.1.2.3 The Symbol may be permanently affixed to or printed on a “hang  
15 tag” secured to the container of each unit of the Covered Product, in which case the Symbol shall  
16 be at least one-half inch tall.

17                   3.2.2 Other Clear and Reasonable Warnings in Retail Stores. In stores not using  
18 the Identifying Signs and Designated Symbol in Retail Stores system described in Section 3.2.1,  
19 the Warning shall be permanently affixed to or printed on the outside packaging or container of  
20 each unit of the Covered Products. The Warning shall be displayed with such conspicuousness, as  
21 compared with other words, statements, designs, or devices on the packaging or labeling, as to  
22 render it likely to be read and understood by an ordinary individual prior to purchase. If the  
23 Warning is displayed on the product container or labeling, the Warning shall be at least the same  
24 size as the largest of any other health or safety warnings on the product container or labeling, and  
25 the word “WARNING” shall be in all capital letters and in bold print. If printed on the labeling  
26 itself, the Warning shall be contained in the same section of the labeling that states other safety  
27 warnings concerning the use of the product.

28                   3.2.3 For Covered Products sold to California consumers through the Internet,



1 the Warning shall be prominently displayed on each webpage describing the ingredients or  
2 attributes of a Covered Product, or the Warning may be provided at the time the customer enters a  
3 California address for the shipping address. In all circumstances, the Warning shall be displayed  
4 with such conspicuousness, as compared with other words, statements, designs, or devices on the  
5 webpages, product packaging, product container, or invoice, as to render it likely to be read and  
6 understood by an ordinary individual prior to purchase. The Warning shall be at least the same size  
7 as the largest of any other health or safety warnings on the webpage, invoice, or product  
8 packaging, and the word "WARNING" shall be in all capital letters and in bold print. A Warning  
9 printed on an invoice must be in a type size at least as tall as the largest letter or numeral in the  
10 name or price of the Covered Product printed on the invoice.

11                   3.2.3.1 BLUEBONNET shall provide an exemplar Warning to the central  
12 purchasing office for all distributors and retail establishments with whom BLUEBONNET  
13 transacts business for sale of the Covered Products in California that require a warning.  
14 BLUEBONNET shall send to each such entity instructions, substantially similar to the sample  
15 letter attached hereto as Exhibit B, to display the warning (in the case of a retailer) or request that  
16 that retailers display the Warning (in the case of a distributor) in accordance with this Consent  
17 Judgment, and shall request a response to BLUEBONNET with a written acknowledgment that  
18 the Warning will be displayed (in the case of a retailer), or that the distributor shall request  
19 retailers to display the Warning, within 30 days of receipt of the instructions. BLUEBONNET  
20 shall send a follow-up communication, substantially similar to the sample letter attached as  
21 Exhibit C, to entities who were sent the original instructions and who did not timely send an  
22 acknowledgment. BLUEBONNET shall maintain files demonstrating compliance with this  
23 provision, including the communications sent and receipts of any acknowledgments from retailers  
24 and distributors. If BLUEBONNET learns that a retailer, distributor, or other person has failed to,  
25 or failed to request another entity to, display the Warning in accordance with section 3.2.1. above,  
26 BLUEBONNET shall stop providing Covered Products to such retailer, distributor, or other  
27 person until it verifies that compliance with the terms of subsection 3.2.1 is achieved.

28                   3.2.3.2 If BLUEBONNET complies with the terms of subsection 3.2.3.1

1 above, it shall not be found to have violated this Consent Judgment where a retail store,  
2 distributor, or other person fails to, or fails to request another entity to, display a Warning in  
3 accordance with this Consent Judgment.

4           **3.2.4** For sales and distribution of Covered Products not described in subsections  
5 3.2.1, 3.2.2, or 3.2.3, the Warning shall be provided at the point of sale or distribution prior to  
6 purchase by the consumer. The Warning Shall be displayed with such conspicuousness, as  
7 compared with other words, statements, designs, or devices, as to render it likely to be read and  
8 understood by an ordinary individual prior to purchase. The Warning shall be at least the same size  
9 as the largest of any other health or safety warnings presented, and the word “WARNING” shall  
10 be in all capital letters and in bold print.

11           **3.3 Reformulated Covered Products**

12           A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” and  
13 “Daily Cadmium Exposure” when the maximum suggested dose is taken as directed on the  
14 Reformulated Covered Product’s label, contains no more than 0.5 micrograms of lead and no more  
15 than 4.1 micrograms of cadmium per day as determined by the quality control methodology  
16 described in Section 3.4.

17           **3.4 Testing and Quality Control Methodology**

18           **3.4.1** Beginning within one year of the Compliance Date, BLUEBONNET  
19 shall arrange for lead and cadmium testing of new lots of the Covered Products at least once a  
20 year for a minimum of two (2) consecutive years by arranging for testing of five randomly  
21 selected samples of each of the Covered Products, in the form intended for sale to the end-user,  
22 which BLUEBONNET intends to sell or is manufacturing for sale in California, directly  
23 selling to a consumer in California or “Distributing into California.” If tests conducted pursuant  
24 to this Section demonstrate that no warning is required for a Covered Product during each of  
25 two (2) consecutive years, then the testing requirements of this Section will no longer be  
26 required as to that Covered Product. However, if during or after the two-year testing period,  
27 BLUEBONNET changes ingredient suppliers for any of the Covered Products and/or  
28 reformulates any of the Covered Products, BLUEBONNET shall test that Covered Product

1 annually for at least two (2) consecutive years after such change is made.

2           3.4.2 For purposes of measuring the “Daily Lead Exposure Level” and “Daily  
3 Cadmium Exposure Level”, the arithmetic mean of five (5) randomly selected samples of the  
4 Covered Products will be controlling.

5           3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
6 laboratory method that complies with the performance and quality control factors appropriate  
7 for the method used, including limit of detection, qualification, accuracy, and precision that  
8 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
9 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
10 method subsequently agreed to in writing by the Parties and approved by the Court through  
11 entry of a modified consent judgment.

12           3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
13 independent third party laboratory certified by the California Environmental Laboratory  
14 Accreditation Program or an independent third-party laboratory that is registered with the  
15 United States Food & Drug Administration.

16           3.4.5 Nothing in this Consent Judgment shall limit BLUEBONNET’s ability  
17 to conduct, or require that others conduct, additional testing of the Covered Products, including  
18 the raw materials used in their manufacture.

19           3.4.6 Beginning on the ComplianceDate and continuing for a period of two  
20 years, BLUEBONNET shall arrange for copies of all laboratory reports with results of testing  
21 for lead and cadmium content under Section 3.4.1 to be automatically sent by the testing  
22 laboratory directly to ERC within ten days after completion of the testing. BLUEBONNET  
23 shall retain all test results and documentation for a period of five years from the date of each  
24 test.

25 **4. SETTLEMENT PAYMENT**

26           4.1 In full satisfaction of all potential civil penalties, additional settlement payments,  
27 attorney’s fees, and costs, BLUEBONNET shall make a total payment of \$75,000.00 (“Total  
28 Settlement Amount”) according to the following payment schedule:

- 1 • Payment 1 -- \$25,000.00 within 10 days of the Effective Date (“Due Date”)
- 2 • Payment 2 -- \$25,000.00 within 100 days of the Effective Date
- 3 • Payment 3 -- \$25,000.00 within 190 days of the Effective Date

4 4.2 BLUEBONNET shall make this payment by wire transfer to ERC’s escrow  
5 account, for which ERC will give BLUEBONNET the necessary account information. The Total  
6 Settlement Amount shall be apportioned as follows:

7 4.3 \$2,000.00 shall be considered a civil penalty pursuant to California Health and  
8 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$1,500.00) of the civil penalty to the  
9 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
11 Code §25249.12(c). ERC will retain the remaining 25% (\$500.00) of the civil penalty.

12 4.4 \$8,975.80 shall be distributed to ERC as reimbursement to ERC for reasonable  
13 costs incurred in bringing this action.

14 4.5 \$37,960.00 shall be distributed to Lozeau Drury LLP as reimbursement of  
15 ERC’s attorney’s fees, while \$26,064.20 shall be distributed to ERC for its in-house legal fees.

16 4.6 In the event that BLUEBONNET fails to remit a payment pursuant to Section  
17 4.1 on or before the respective Due Date, BLUEBONNET shall be deemed to be in material  
18 breach of its obligations under this Consent Judgment. ERC shall provide written notice of the  
19 delinquency to BLUEBONNET via electronic mail. If BLUEBONNET fails to deliver the the  
20 delinquent payment within five (5) days from the written notice, the Total Settlement Amount  
21 shall be immediately due and owing and shall accrue interest at the statutory judgment interest  
22 rate provided in the Code of Civil Procedure section 685.010. Additionally, BLUEBONNET  
23 agrees to pay ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment  
24 due under this Consent Judgment.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by  
27 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a  
28 modified consent judgment.

1           **5.2** If BLUEBONNET seeks to modify this Consent Judgment under Section 5.1,  
2 then BLUEBONNET must provide written notice to ERC of its intent (“Notice of Intent”). If  
3 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then  
4 ERC must provide written notice to BLUEBONNET within thirty days of receiving the Notice  
5 of Intent. If ERC notifies BLUEBONNET in a timely manner of ERC’s intent to meet and  
6 confer, then the Parties shall meet and confer in good faith as required in this Section. The  
7 Parties shall meet in person or via telephone within thirty (30) days of ERC’s notification of its  
8 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the  
9 proposed modification, ERC shall provide to BLUEBONNET a written basis for its position.  
10 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to  
11 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing  
12 to different deadlines for the meet-and-confer period.

13           **5.3** In the event that BLUEBONNET initiates or otherwise requests a modification  
14 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
15 Consent Judgment, BLUEBONNET shall reimburse ERC its costs and reasonable attorney’s  
16 fees for the time spent in the meet-and-confer process and filing and arguing the motion or  
17 application. However, if modifications to this Agreement are required based on a change of  
18 law, each Party shall bare their own costs and fees.

19           **5.4** Where the meet-and-confer process does not lead to a joint motion or  
20 application in support of a modification of the Consent Judgment, then either Party may seek  
21 judicial relief on its own. ERC may seek fees and costs pursuant to California Code of Civil  
22 Procedure section 1021.5.

23       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
24       **JUDGMENT**

25           **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
26 this Consent Judgment.

27           **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
28 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

1 inform BLUEBONNET in a reasonably prompt manner of its test results, including information  
2 sufficient to permit BLUEBONNET to identify the Covered Products at issue. BLUEBONNET  
3 shall, within forty-five days following such notice, provide ERC with testing information, from  
4 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
5 demonstrating BLUEBONNET's compliance with the Consent Judgment, if warranted.

6 **7. APPLICATION OF CONSENT JUDGMENT**

7 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
8 respective owners, principals, officers, directors, shareholders, employees, agents, parent  
9 companies, subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers),  
10 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment  
11 shall have no application to Covered Products which are distributed or sold exclusively outside the  
12 State of California and which are not used by California consumers.

13 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

14 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
15 on behalf of itself and in the public interest, and its respective officers, directors, shareholders,  
16 employees, agents, parent companies, subsidiaries, affiliates, divisions, successors, and assigns  
17 of any of them. (Collectively referred to as the "ERC Releasers") and BLUEBONNET and its  
18 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
19 affiliates under common ownership, divisions, suppliers, franchisees, licensees, customers (not  
20 including private label customers of BLUEBONNET), distributors, wholesalers, retailers, and  
21 all other upstream and downstream entities in the distribution chain of any Covered Product,  
22 and the predecessors, successors and assigns of any of them (collectively, "Released Parties").  
23 To the fullest extent permissible by law, the ERC Releasers hereby fully release and discharge  
24 the Released Parties from any and all claims, actions, causes of action, suits, demands,  
25 liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been  
26 asserted from the handling, use, or consumption of the Covered Products, as to any alleged  
27 violation of Proposition 65 or its implementing regulations arising from the failure to provide  
28

1 Proposition 65 warnings on the Covered Products regarding lead and cadmium up to and  
2 including the Compliance Date.

3           **8.2**           ERC on its own behalf only, on one hand, and BLUEBONNET on its own  
4 behalf only, on the other, further waive and release any and all claims they may have against  
5 each other for all actions or statements made or undertaken in the course of seeking or opposing  
6 enforcement of Proposition 65 in connection with the Notice or FAC up through and including  
7 the Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any  
8 Party's right to seek to enforce the terms of this Consent Judgment.

9                   **8.2.1**   To the fullest extent permitted by law, the ERC Releasors release  
10 the Released Parties from any and all claims relating to the Covered Products that were asserted  
11 or that could have been asserted, for any alleged violations of any other statutory or common law  
12 authority up through and including the Compliance Date.

13           **8.3**           It is possible that other claims not known to the Parties arising out of the facts  
14 alleged in the Notice or the FAC and relating to the Covered Products will develop or be  
15 discovered. The ERC Releasors, on one hand, and BLUEBONNET, on the other hand,  
16 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
17 claims up through the Compliance Date, including all rights of action therefore. ERC and  
18 BLUEBONNET acknowledge that the claims released in Sections 8.1 and 8.2 above may  
19 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
20 such unknown claims. California Civil Code section 1542 reads as follows:

21                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
22                   CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
23                   FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
24                   KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
25                   OR HER SETTLEMENT WITH THE DEBTOR.

26 ERC on behalf of itself only, on the one hand, and BLUEBONNET, on the other hand,  
27 acknowledge and understand the significance and consequences of this specific waiver of  
28 California Civil Code section 1542.

1           **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
3 and cadmium in the Covered Products as set forth in the Notice and the FAC.

4           **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65, nor shall it apply to any of  
6 BLUEBONNET's products other than the Covered Products.

7           **8.6** In the event that Proposition 65 is repealed or amended or its implementing  
8 regulations are modified by the Office of Environmental Health Hazard Assessment ("OEHHA")  
9 regarding the requirements of the safe harbor warning language currently set forth in 27  
10 California Code of Regulations Section 25603.2, the Specific Regulatory Levels Posing No  
11 Significant Risk currently set forth in 27 California Code of Regulations Section 25705, or the  
12 Specific Regulatory Levels: Chemicals Causing Reproductive Toxicity currently set forth in 27  
13 California Code of Regulations Section 25805, either Party may move to modify the Consent  
14 Judgment accordingly pursuant to Section 5 above.

15           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

16           In the event that any of the provisions of this Consent Judgment are held by a court to be  
17 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

18           **10. GOVERNING LAW**

19           The terms and conditions of this Consent Judgment shall be governed by and construed in  
20 accordance with the laws of the State of California.

21           **11. PROVISION OF NOTICE**

22           All notices required to be given to either Party to this Consent Judgment by the other shall  
23 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
24 email may also be sent.

25           **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

26 Chris Heptinstall, Executive Director, Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Tel: (619) 500-3090



1 Email: chris\_erc501c3@yahoo.com

2 With a copy to:

3 RICHARD DRURY  
4 REBECCA L. DAVIS  
5 LOZEAU | DRURY LLP  
6 410 12<sup>th</sup> Street, Suite 250  
7 Oakland, CA 94607  
8 Ph: 510-836-4200  
9 Fax: 510-836-4205  
10 Email: richard@lozeaudrury.com  
11 rebecca@lozeaudrury.com

12  
13  
14  
15 **BLUEBONNET NUTRITION CORPORATION**

16 Trisha Sugarek MacDonald  
17 10410 Corporate Dr.  
18 Sugar Land, TX 77478

19 Bob Barrows, Sr.  
20 12915 Dairy Ashford  
21 Sugar Land, TX 77478

22 With a copy to:

23 RICHARD J. DECKER  
24 MARC BERKEMEIER  
25 RAINES FELDMAN LLP  
26 1800 Avenue of the Stars  
27 12th Floor  
28 Los Angeles, CA 90067  
PH: 310-440-4100  
FAX: 310-691-1367  
EMAIL: mberkemeier@raineslaw.com

29 **12. COURT APPROVAL**

30 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
31 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
32 Consent Judgment.

33 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
34 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
35 prior to the hearing on the motion.

1           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
2 void and have no force or effect.

3           **13. EXECUTION AND COUNTERPARTS**

4           This Consent Judgment may be executed in counterparts, which taken together shall be  
5 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as  
6 the original signature.

7           **14. DRAFTING**

8           The terms of this Consent Judgment have been reviewed by the respective counsel for each  
9 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
10 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
11 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
12 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
13 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
14 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
15 equally in the preparation and drafting of this Consent Judgment.

16           **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

17           If a dispute arises with respect to either Party's compliance with the terms of this Consent  
18 Judgment entered by the Court, then the Party contending that there is non-compliance must  
19 provide sixty (60) days written notice to the other Party of its intent to meet and confer regarding  
20 any alleged non-compliance. The Parties shall meet and confer within sixty (60) days of the  
21 written notice in person, by telephone, and/or in writing and endeavor to resolve the dispute in an  
22 amicable manner. No action or motion may be filed in the absence of such a good faith attempt to  
23 resolve the dispute beforehand.

24           **16. ENFORCEMENT**

25           Either party may, by motion or order to show cause before the Superior Court of  
26 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any  
27 action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
28 penalties, or remedies as are provided by California Code of Civil Procedure section 1021.5 for

1 failure to comply with the Consent Judgment. To the extent the failure to comply with the  
2 Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC shall not be  
3 limited to enforcement of this Consent Judgment, but may seek in another action whatever fines,  
4 costs, penalties, or remedies as are provided by law for failure to comply with Proposition 65 or  
5 other laws.

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

7 **17.1** This Consent Judgment contains the sole and entire agreement and  
8 understanding of the Parties with respect to the entire subject matter herein, and any and all  
9 prior discussions, negotiations, commitments and understandings related hereto. No  
10 representations, oral or otherwise, express or implied, other than those contained herein have  
11 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
12 herein, shall be deemed to exist or to bind any Party.

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
14 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
15 explicitly provided herein, each Party shall bear its own fees and costs.

16 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
17 **CONSENT JUDGMENT**

18 This Consent Judgment has come before the Court upon the request of the Parties. The  
19 Parties request the Court to fully review this Consent Judgment and, being fully informed  
20 regarding the matters which are the subject of this action, to:

21 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
22 equitable settlement of all matters raised by the allegations of the FAC, that the matter has been  
23 diligently prosecuted, and that the public interest is served by such settlement; and

24 (2) Make the findings pursuant to California Health and Safety Code section  
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

26 **IT IS SO STIPULATED:**  
27  
28

1 Dated: 3/31/, 2017  
2

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: [Signature]  
Chris Heffernan, Executive Director

3  
4  
5 Dated: March 30, 2017  
6

BLUEBONNET NUTRITION  
CORPORATION

By: [Signature]  
Its: President

7  
8  
9  
10 APPROVED AS TO FORM:

11 Dated: MARCH 31, 2017

LOZEAU | DRURY LLP

By: [Signature]  
Richard T. Drury  
Rebecca L. Davis  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

12  
13  
14  
15  
16 Dated: March 30, 2017

RAINES FELDMAN LLP

By: [Signature]  
Richard J. Decker  
Marc Berkemeier  
Attorneys for Bluebonnet Nutrition  
Corporation

17  
18  
19  
20  
21  
22 **ORDER AND JUDGMENT**

23 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
24 approved and Judgment is hereby entered according to its terms.

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26  
27 Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Judge of the Superior Court

# EXHIBIT A



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Bluebonnet Nutrition Corporation  
12915 Dairy Ashford Road  
Sugar Land, TX 77478

Gary A. Barrows  
(Bluebonnet Nutrition Corporation's  
Registered Agent for Service of Process)  
12915 Dairy Ashford Road  
Sugar Land, TX 77478

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA ELECTRONIC MAIL**

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

Michelle Latimer, Program Coordinator  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Gary Lieberstein, District Attorney  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

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

**VIA ELECTRONIC MAIL**

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

Gregory Alker, Assistant District Attorney  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Yen Dang, Supervising Deputy District  
Attorney  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

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

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

**VIA PRIORITY MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Bluebonnet Nutrition Corporation**

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **Bluebonnet Nutrition Corporation 100% Natural Dual-Action Protein Whey + Casein Natural Chocolate Flavor - Lead**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Vanilla - Lead**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate Mocha - Lead**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate - Lead**
- **Bluebonnet Nutrition Corporation Super Earth OrganicGreens - Lead**

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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or

December 16, 2015

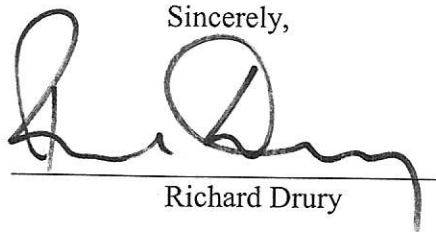
Page 3

dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since December 16, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Drury', written over a horizontal line.

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Bluebonnet Nutrition Corporation and its Registered Agent for Service of Process only)

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



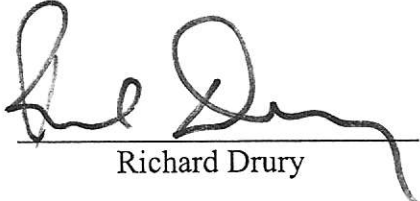
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Bluebonnet Nutrition Corporation**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party 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 exposure to the listed chemical that is the subject of the notice.
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 Violator 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: December 16, 2015

  
Richard Drury

**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 entitled action. 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 December 16, 2015, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President	Gary A. Barrows
Bluebonnet Nutrition Corporation	(Bluebonnet Nutrition Corporation’s
12915 Dairy Ashford Road	Registered Agent for Service of Process)
Sugar Land, TX 77478	12915 Dairy Ashford Road
	Sugar Land, TX 77478

On December 16, 2015, 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  
Oakland, CA 94612-0550

On December 16, 2015, I 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 the party listed below:

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

Gary Lieberstein, District Attorney  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Michelle Latimer, Program Coordinator  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

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

December 16, 2015

Page 6

Gregory Alker, Assistant District Attorney  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

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

Yen Dang, Supervising Deputy District Attorney  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

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

Stephan R. Passalacqua, District Attorney  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

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

On December 16, 2015, 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 Priority Mail.

Executed on December 16, 2015, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

Service List

District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

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

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

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

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

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

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

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

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, Inyo County  
230 W. Line Street  
Bishop, CA 93514

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  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

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

District Attorney, Merced County  
550 W. Main Street  
Merced, CA 95340

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

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
Post Office Box 1131  
Salinas, CA 93902

District Attorney, Nevada County  
201 Commercial Street  
Nevada City, CA 95959

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

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

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814

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

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101

District Attorney, San Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

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

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

District Attorney, Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

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

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

District Attorney, Siskiyou County  
Post Office Box 986  
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  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
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

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

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

**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 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 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say 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 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, 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> 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 Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### ***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 and 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 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 any reimbursement for costs and attorney's fees, if the notice 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 \$5B500 (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 of greater than 750,000 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: December 16, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **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: December 16, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

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

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

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.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A



T 510.836.4200  
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[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)

**VIA CERTIFIED MAIL**

Current CEO or President  
Bluebonnet Nutrition Corporation  
12915 Dairy Ashford Road  
Sugar Land, TX 77478

Gary A. Barrows  
(Bluebonnet Nutrition Corporation's  
Registered Agent for Service of Process)  
12915 Dairy Ashford Road  
Sugar Land, TX 77478

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

**VIA ELECTRONIC MAIL**

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

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

March 24, 2017

Page 2

**VIA ELECTRONIC MAIL**

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

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

Stephan R. Passalacqua, District Attorney  
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600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

**VIA ELECTRONIC MAIL**

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

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

**VIA PRIORITY MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

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

**Bluebonnet Nutrition Corporation**

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate - Cadmium**
- 2. Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate Mocha - Cadmium**
- 3. Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Vanilla - Cadmium**

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to cadmium. Each of these ongoing violations has occurred on every day since March 24, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

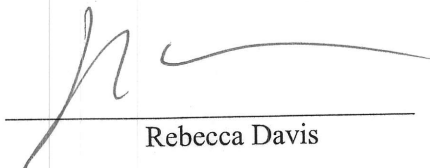
Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
March 24, 2017  
Page 4

matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rebecca Davis

Attachments

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Bluebonnet Nutrition Corporation and its Registered Agent for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)

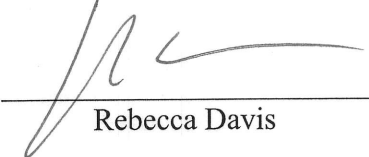
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Bluebonnet Nutrition Corporation**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party 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 exposure to the listed chemical that is the subject of the notice.
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 Violator 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: March 24, 2017

  
\_\_\_\_\_  
Rebecca Davis



**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 entitled action. 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 March 24, 2017, 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:

Current CEO or President	Gary A. Barrows
Bluebonnet Nutrition Corporation	(Bluebonnet Nutrition Corporation’s
12915 Dairy Ashford Road	Registered Agent for Service of Process)
Sugar Land, TX 77478	12915 Dairy Ashford Road
	Sugar Land, TX 77478

On March 24, 2017, 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  
Oakland, CA 94612-0550

On March 24, 2017, I 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:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mлатimer@co.lassen.ca.us](mailto:mлатimer@co.lassen.ca.us)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

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

March 24, 2017

Page 7

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Stephan R. Passalacqua, District Attorney  
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Sonoma, CA 95403  
jbarnes@sonoma-county.org

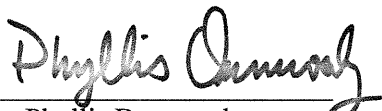
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
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Prop65@co.tulare.ca.us

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

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

On March 24, 2017, 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 Priority Mail.

Executed on March 24, 2017, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

Service List

District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
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, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

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

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

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, Inyo County  
230 W. Line Street  
Bishop, CA 93514

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  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

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

District Attorney, Merced County  
550 W. Main Street  
Merced, CA 95340

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

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada County  
201 Commercial Street  
Nevada City, CA 95959

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

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

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

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

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92401

District Attorney, San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101

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

District Attorney, Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

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

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

District Attorney, Siskiyou County  
Post Office Box 986  
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  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
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

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

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

**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 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 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say 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 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, 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> 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 Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### ***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 and 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 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 any reimbursement for costs and attorney's fees, if the notice 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 \$5B500 (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 of greater than 750,000 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: March 24, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **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: March 24, 2017

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

**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 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).

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

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

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.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A

# EXHIBIT B

## Letter to Retailers and Distributors

Bluebonnet Nutrition Corporation (“Bluebonnet”) has entered into a consent judgment with Environmental Research Center, Inc. regarding the presence of lead in the following specified dietary supplements sold into the state of California (“Specified Products”):

- **Bluebonnet Nutrition Corporation 100% Natural Dual-Action Protein Whey + Casein  
Natural Chocolate Flavor**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Vanilla**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate Mocha**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate**
- **Bluebonnet Nutrition Corporation Super Earth OrganicGreens**

Bluebonnet is providing the enclosed sign warnings to you so that they can be posted in retail stores selling any of the Specified Products that are sold within retail establishments in California.

If you are a retailer, Bluebonnet requests that you post copies of these signs in or on any shelf(ves), displays, or aisle(s) where the identified products are sold. If you are a distributor, we request that you provide these signs to all retailers to whom you distribute the identified products and instruct them to post copies of these signs in or on any shelf(ves), displays, or aisle(s) where the identified products are sold.

Alternatively, if any store has less than 7,500 square feet of retail space and no more than two cash registers, the sign may be posted at each cash register. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers.

Please sign and return the written acknowledgment below within 30 days of receiving this letter to acknowledge that you have received the signs and that they will be posted in accordance with these specifications until you receive written instruction from Bluebonnet to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate sign locations for your specific retail store(s), please contact [Contact Information]

Acknowledged by:

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Company/Store Location)

\_\_\_\_\_ (Date)

# EXHIBIT C

## Follow-Up Letter to Retailers and Distributors

On [Date], Bluebonnet Nutrition Corporation (“Bluebonnet”) sent you a letter enclosing sign warnings for posting in your stores in California, or stores in California to which you distribute its dietary supplements, pursuant to a consent judgment entered into between Bluebonnet and Environmental Research Center, Inc. regarding the presence of lead in specified dietary supplements sold in California.

Copies of these signs are to be posted in or on any shelf(ves), displays, or aisle(s) where any of the specified dietary supplements identified below are sold in your stores in California or stores in California to which you distribute these supplements:

- **Bluebonnet Nutrition Corporation 100% Natural Dual-Action Protein Whey + Casein  
Natural Chocolate Flavor**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Vanilla**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate Mocha**
- **Bluebonnet Nutrition Corporation Organic Super Earth VeggieProtein Chocolate**
- **Bluebonnet Nutrition Corporation Super Earth OrganicGreens**

Alternatively, if any store has less than 7,500 square feet of retail space and no more than two cash registers, the sign may be posted at each cash register. The signs may not be covered or obscured, and should be placed and displayed in such a way that they are likely to be read and understood by customers.

We have not received your written acknowledgment that you have received the signs and that your stores will post these signs, or, if you are a distributor, that you will provide the signs and instructions to retailers to whom you distribute the identified products. Please sign and return the written acknowledgement below as soon as possible to acknowledge that you have received the signs and that they will be posted or provided in accordance with these specifications until you receive written instruction from Bluebonnet to the contrary.

Thank you for your cooperation. If you need more signs or have any questions, such as the appropriate sign locations for specific retail stores, please contact [Contact Information]

Acknowledged by:

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Company/Store Location)  
\_\_\_\_\_  
(Date)

# EXHIBIT D

