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

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

27 **Plaintiff,**

28 **vs.**

WELL BEYOND, LLC and DOES 1-100

Defendants.

CASE NO. RG19025217

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 1, 2019

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On July 1, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing
4 a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Well Beyond, LLC (“Well Beyond”) and Does 1-100. Subsequently, on October 13,
7 2020 , a First Amended Complaint was filed (hereinafter referred to as the operative
8 “Complaint”). In this action, ERC alleges that a number of products manufactured, distributed,
9 or sold by Well Beyond contain lead and/or cadmium, chemicals listed under Proposition 65 as
10 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
11 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
12 “Covered Product” or collectively as “Covered Products”) are: (1) Beyond Shake Balanced
13 Nutrition Meal Replacement Salted Caramel Vanilla (lead), (2) Beyond Shake High-
14 Antioxidant Meal Replacement Dark Chocolate (lead), (3) Beyond Healthy Chocolate Xobiotic
15 Squares (lead, cadmium), (4) Beyond Xe Energy Multiplier Proprietary Blend of Superfruits +
16 Cacao (lead), (5) Beyond Healthy Chocolate Nuggets Dark Chocolate With Acai and
17 Blueberry (lead), and (6) Beyond Healthy Chocolate X Power Squares Extreme Dark
18 Chocolate With Acai & Blueberry (lead).

19 **1.2** ERC and Well Beyond 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, the Parties agree that there is a dispute
26 over whether Well Beyond is or has been a business entity that has employed ten or more
27 persons at all times relevant to this action such that Well Beyond qualifies as a “person in the
28 course of doing business” within the meaning of Proposition 65 (“Person in the Course of Doing

1 Business”). ERC contends that evidence shows that Well Beyond qualified, at times relevant to
2 this action, as a Person in the Course of Doing Business; while Well Beyond contends that it
3 does not qualify, and has not qualified, as a Person in the Course of Doing Business at any time
4 relevant to this action. Well Beyond distributes and/or sells the Covered Products.

5 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
6 dated April 11, 2019 and February 20, 2020 that were served on the California Attorney
7 General, other public enforcers, and Well Beyond (“Notices”). True and correct copies of the
8 60-Day Notices dated April 11, 2019 and February 20, 2020 are attached hereto as **Exhibits A**
9 **and B** and each is incorporated herein by reference. More than 60 days have passed since the
10 Notices were served on the Attorney General, public enforcers, and Well Beyond and no
11 designated governmental entity has filed a Complaint against Well Beyond with regard to the
12 Covered Products or the alleged violations.

13 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
14 persons in California to lead and/or cadmium without first providing clear and reasonable
15 warnings in violation of California Health and Safety Code section 25249.6. Well Beyond
16 denies all material allegations contained in the Notices and Complaint.

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

24 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
26 any current or future legal proceeding unrelated to these proceedings.

27 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
28 as a Judgment by this Court.

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment and any further court action that may become
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
4 jurisdiction over the allegations of violations contained in the Complaint (except insofar as Well
5 Beyond disputes that it is a Person in the Course of Doing Business under the Act), personal
6 jurisdiction over Well Beyond as to the acts alleged in the Complaint, that venue is proper in
7 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
8 final resolution of all claims up through and including the Effective Date which were or could
9 have been asserted in this action based on the facts alleged in the Notices and Complaint.

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

11 **3.1** Beginning after the Effective Date, if at any time Well Beyond qualifies as a
12 Person in the Course of Doing Business, Well Beyond shall be permanently enjoined from
13 manufacturing for sale in the State of California, “Distributing into the State of California,” or
14 directly selling in the State of California, any Covered Product which exposes a person to a
15 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or “Daily
16 Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it meets
17 the warning requirements under Section 3.2.

18 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
19 of California” shall mean to directly ship a Covered Product into California for sale in
20 California or to sell a Covered Product to a distributor that Well Beyond knows or has reason
21 to know will sell the Covered Product in California.

22 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
23 Level” shall be measured in micrograms, and shall be calculated using the following formula:
24 micrograms of lead per gram of product, multiplied by grams of product per serving of the
25 product (using the largest serving size appearing on the product label), multiplied by servings
26 of the product per day (using the largest number of recommended daily servings appearing on
27 the label), which equals micrograms of lead exposure per day. If the label contains no
28 recommended daily servings, then the number of recommended daily servings shall be one.

1 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
4 product (using the largest serving size appearing on the product label), multiplied by servings
5 of the product per day (using the largest number of recommended daily servings appearing on
6 the label), which equals micrograms of cadmium exposure per day. If the label contains no
7 recommended daily servings, then the number of recommended daily servings shall be one.

8 **3.1.4** In the event that Well Beyond does not seek to comply with the provisions
9 in Section 3.2 and 3.4 of this Consent Judgment because it contends that it is not a Person in the
10 Course of Doing Business, Well Beyond shall provide to ERC proof, in the form of IRS form
11 941s (“Employment Proof”) to confirm whether or not Well Beyond qualifies as a Person in the
12 Course of Doing Business. Well Beyond shall provide Employment Proof to ERC within thirty
13 (30) days after the Effective Date (“Initial Disclosure”) and, thereafter, within thirty (30) days
14 before or after each successive anniversary of the Effective Date (“Successive Disclosure”) up to
15 and including the fifth anniversary of the Effective Date. The Employment Proof provided in the
16 Initial Disclosure shall cover the period from one year prior to the Effective Date up through and
17 including the date of the Initial Disclosure. Thereafter, each Successive Disclosure shall include
18 Employment Proof for the period dating back to the immediately preceding disclosure of
19 Employment Proof. Well Beyond shall comply with the injunctive terms of this Consent
20 Judgment during any period of time that it qualifies as a Person in the Course of Doing Business,
21 whether or not that occurs before the annual Employment Proof reporting requirement contained
22 in this subsection. However, so long as Well Beyond is in compliance with the provisions of
23 Sections 3.2 and 3.4, Well Beyond has no obligation to provide the information described in
24 Section 3.1.4 or otherwise comply with Section 3.1.4.

25 **3.2 Clear and Reasonable Warnings**

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


28 ///

1 **OPTION 1:**

2 **WARNING:** Consuming this product can expose you to chemicals including [lead]
3 [and] [cadmium] which is [are] known to the State of California to cause [cancer and]
4 birth defects or other reproductive harm. For more information go to
5 www.P65Warnings.ca.gov/food.

5 Or

6 **OPTION 2:**

7  **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov.

8
9 Well Beyond shall use the phrase “cancer and” in the Warning if Well Beyond has reason
10 to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
11 determined pursuant to the quality control methodology set forth in Section 3.4 or if another
12 Proposition 65 chemical is present which may require a cancer warning. Additionally, the word
13 “**WARNING**” shall be in all capital letters and bold print.

14 For Option 1, as identified in the brackets, the Warning shall appropriately reflect
15 whether there is lead, cadmium, or both chemicals present in each of the Covered Products.
16 For Option 2, a symbol consisting of a black exclamation point in a yellow equilateral triangle
17 with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller
18 than the height of the word “**WARNING.**”

19 The Warning shall be securely affixed to or printed upon the container or label of each
20 Covered Product requiring a warning. If the Warning is provided on the label, it must be set
21 off from other surrounding information and enclosed in a box. In addition, for any Covered
22 Product requiring a warning that is sold over the internet, when a California delivery address is
23 indicated for any purchase of any Covered Product requiring a warning, the Warning shall be
24 provided either on the Covered Product requiring a warning’s primary display page or by
25 otherwise prominently displaying the Warning to the purchaser prior to completing the
26 purchase. If the Warning is provided on the checkout page, an asterisk or other identifying
27 method must be utilized to identify which products on the checkout page are subject to the
28 Warning. The Warning may be made through a clearly marked hyperlink using the word

1 “**WARNING**” in all capital and bold letters so long as the hyperlink goes directly to a page
2 prominently displaying the Warning without content that detracts from the Warning. The
3 Warning may contain information that is supplemental to the content required by this Section
4 only to the extent that such information identifies the source of the exposure or provides
5 information on how to avoid or reduce exposure to the identified chemical or chemicals. For
6 purposes of this Section, a Warning is not prominently displayed if the purchaser must search
7 for it in the general content of the website.

8 Well Beyond must display the above Warning with such conspicuousness, as compared
9 with other words, statements or designs on the label or container, or on its website if applicable, to
10 render the Warning likely to be read and understood by an ordinary individual under customary
11 conditions of purchase or use of the product. The Parties intend that this Section 3.2 shall be
12 interpreted in such a way as to comply with 27 CCR §§ 25602 and 25607.1, in effect on the date
13 the Parties execute this document and as thereafter amended from time to time, and that any
14 warning that would comply with these California regulations will be deemed to comply with this
15 Section 3.2 so long as the amendments to these California regulations are applicable to the
16 Covered Products.

17 **3.3 Conforming Covered Products**

18 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
19 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure
20 Level” is no more than 4.1 micrograms of cadmium per day as determined by the quality control
21 methodology described in Section 3.4.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year of the Effective Date, Well Beyond shall
24 arrange for lead and cadmium testing of the Covered Products at least once a year for five
25 consecutive years by arranging for testing of one randomly selected sample of each of the
26 Covered Products, in the form intended for sale to the end-user, which Well Beyond intends to
27 sell or is manufacturing for sale in California, directly selling to a consumer in California or
28 “Distributing into the State of California.” If tests conducted pursuant to this Section

1 demonstrate that no Warning is required for a Covered Product during each of five consecutive
2 years, then the testing requirements of this Section will no longer be required as to that
3 Covered Product.

4 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
5 “Daily Cadmium Exposure Level,” the lead and/or cadmium detection result of the one (1)
6 randomly selected sample of each of the Covered Products will be controlling.

7 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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 Well Beyond’s ability to
17 conduct, or require that others conduct, additional testing of the Covered Products, including
18 the raw materials used in their manufacture. However, any such testing will not be considered
19 in any action related to the Covered Products.

20 **3.4.6** Within thirty (30) days of ERC’s written request, Well Beyond shall
21 deliver lab reports obtained pursuant to Section 3.4 to ERC. Well Beyond shall retain all test
22 results and documentation for a period of five years from the date of each test.

23 **3.4.7** The testing requirements under this Section 3.4 do not apply to any
24 Covered Product for which Well Beyond has provided the Warning specified in Section 3.2
25 continuously and uninterrupted after the Effective Date or that Well Beyond is no longer
26 selling in California; however, in the event Well Beyond ceases to provide the Warning
27 specified in Section 3.2 or resumes selling the Covered Product in California, Well Beyond
28 shall be required to comply with the testing requirements of this section beginning immediately

1 after (a) the date the Warning ceases to be provided or (b) the date that Well Beyond resumes
2 selling the Covered Product in California (whichever is applicable) or one year after the
3 Effective Date, whichever date is later.

4 **4. SETTLEMENT PAYMENT**

5 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
6 attorney’s fees, and costs, Well Beyond shall make a total payment of \$80,000.00 (“Total
7 Settlement Amount”) to ERC in six periodic payments (the “Periodic Payments”) according to
8 the following payment schedule (“Due Dates”):

- 9 • Payment 1 -- \$13,333.35 within 5 days of the Effective Date
- 10 • Payment 2 -- \$13,333.33 within 35 days of the Effective Date
- 11 • Payment 3 -- \$13,333.33 within 65 days of the Effective Date
- 12 • Payment 4 -- \$13,333.33 within 95 days of the Effective Date
- 13 • Payment 5 -- \$13,333.33 within 125 days of the Effective Date
- 14 • Payment 6 -- \$13,333.33 within 155 days of the Effective Date

15
16 Well Beyond shall make these Periodic Payment by wire transfer to ERC’s account, for
17 which ERC will give Well Beyond the necessary account information. The Total Settlement
18 Amount shall be apportioned as follows:

19 **4.2** \$34,750.00 shall be considered a civil penalty pursuant to California Health and
20 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,062.50) of the civil penalty to
21 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
22 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
23 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,687.50) of the civil penalty.

24 **4.3** \$11,484.75 shall be distributed to ERC as reimbursement to ERC for reasonable
25 costs incurred in bringing this action.

26 **4.4** \$25,865.85 shall be distributed to ERC as an Additional Settlement Payment
27 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
28 and 3204. ERC will utilize the ASP for activities that address the same public harm as

1 allegedly caused by Defendant in this matter. These activities are detailed below and support
2 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
3 dietary supplement products in California. ERC's activities have had, and will continue to
4 have, a direct and primary effect within the State of California because California consumers
5 will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in
6 dietary supplements and/or by providing clear and reasonable warnings to California
7 consumers prior to ingestion of the products.

8 Based on a review of past years' actual budgets, ERC is providing the following list of
9 activities ERC engages in to protect California consumers through Proposition 65 citizen
10 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
11 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
12 supplement products that may contain lead and/or cadmium and are sold to California
13 consumers. This work includes continued monitoring and enforcement of past consent
14 judgments and settlements to ensure companies are in compliance with their obligations
15 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
16 cadmium. This work also includes investigation of new companies that ERC does not obtain
17 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
18 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
19 companies, developing and maintaining a case file, testing products from these companies,
20 providing the test results and supporting documentation to the companies, and offering
21 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
22 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
23 Lead?" Program which reduces the numbers of contaminated products that reach California
24 consumers by providing access to free testing for lead in dietary supplement products (Products
25 submitted to the program are screened for ingredients which are suspected to be contaminated,
26 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
27 the results shared with the consumer that submitted the product).

28 ERC shall be fully accountable in that it will maintain adequate records to document

1 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
2 are being spent only for the proper, designated purposes described in this Consent Judgment.
3 ERC shall provide the Attorney General, within thirty days of any request, copies of
4 documentation demonstrating how such funds have been spent.

5 **4.5** \$7,899.40 shall be distributed to ERC for its in-house legal fees. Except as
6 explicitly provided herein, each Party shall bear its own fees and costs.

7 **4.6** In the event that Well Beyond fails to remit, in full, any of the Periodic
8 Payments owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable
9 Due Date, Well Beyond shall be deemed to be in material breach of its obligations under this
10 Consent Judgment. ERC shall provide written notice of the delinquency to Well Beyond via
11 electronic mail. If Well Beyond fails to deliver the delinquent payment within five (5) days
12 from the written notice, the Total Settlement Amount, less any amounts previously paid
13 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
14 statutory judgment interest rate provided in the California Code of Civil Procedure section
15 685.010. Additionally, Well Beyond agrees to pay ERC's reasonable attorney's fees and costs
16 for any efforts to collect the payment due under this Consent Judgment.

17 **5. MODIFICATION OF CONSENT JUDGMENT**

18 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
19 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
20 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
21 modified consent judgment.

22 **5.2** If Well Beyond seeks to modify this Consent Judgment under Section 5.1, then
23 Well Beyond must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
24 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
25 must provide written notice to Well Beyond within thirty (30) days of receiving the Notice of
26 Intent. If ERC notifies Well Beyond in a timely manner of ERC's intent to meet and confer,
27 then the Parties shall meet and confer in good faith as required in this Section. The Parties
28 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent

1 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
2 modification, ERC shall provide to Well Beyond a written basis for its position. The Parties
3 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
4 remaining disputes. Should it become necessary, the Parties may agree in writing to different
5 deadlines for the meet-and-confer period.

6 **5.3** In the event that Well Beyond initiates or otherwise requests a modification
7 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
8 modification of the Consent Judgment, Well Beyond shall reimburse ERC its costs and
9 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
10 arguing the motion or application.

11 **5.4** Where the meet-and-confer process does not lead to a joint motion or
12 application in support of a modification of the Consent Judgment, then either Party may seek
13 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
14 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
15 section 1021.5.

16 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
17 **JUDGMENT**

18 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
19 terminate this Consent Judgment, unless the Court finds that Well Beyond is not a Person in
20 the Course of Doing Business under the Act.

21 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming Covered
22 Product (and for which ERC alleges that no Warning has been provided when required pursuant
23 to this Consent Judgment) or if ERC contends that Well Beyond is selling any product in the
24 state of California not in compliance with Proposition 65, then ERC shall inform Well Beyond in
25 a reasonably prompt manner of its test results, including information sufficient to permit Well
26 Beyond to identify the Covered Products at issue. Well Beyond shall, within thirty (30) days
27 following such notice, provide ERC with testing information, from an independent third-party
28 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Well Beyond's

1 compliance with the Consent Judgment, except if Well Beyond establishes that it is not a Person
2 in the Course of Doing Business under the Act.

3 **6.3** In the event that ERC contends that Well Beyond is in violation of this Consent
4 Judgment, the Parties shall first attempt to resolve the matter prior to ERC taking any further
5 legal action. ERC shall provide prompt notice, pursuant to Section 11 of this Consent Judgment,
6 describing any alleged violations in detail, and Well Beyond shall have 30 days to take remedial
7 action to cure any alleged violations prior ERC taking any further legal action. So long as Well
8 Beyond has begun to take action to remedy the alleged violation, and advised ERC in writing of
9 such remedial action, within 30 days after ERC's notice, ERC will not bring any enforcement
10 action.

11 **7. APPLICATION OF CONSENT JUDGMENT**

12 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
13 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
14 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
15 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
16 application to any Covered Product which is distributed or sold exclusively outside the State of
17 California and which is not used by California consumers.

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

19 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
20 on behalf of itself and in the public interest, and Well Beyond and its respective officers,
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
22 franchisees, licensees, customers (not including private label customers of Well Beyond),
23 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
24 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
25 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
26 hereby fully releases and discharges the Released Parties from any and all claims, actions,
27 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
28 asserted, or that could have been asserted from the handling, use, or consumption of the

1 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
2 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
3 lead and/or cadmium up to and including the Effective Date.

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

10 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and Well Beyond on behalf of itself only,
13 acknowledge that this Consent Judgment is expressly intended to cover and include all such
14 claims up through and including the Effective Date, including all rights of action therefore.
15 ERC and Well Beyond acknowledge that the claims released in Sections 8.1 and 8.2 above
16 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
17 any such unknown claims. California Civil Code section 1542 reads as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
21 AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

22 ERC on behalf of itself only, and Well Beyond on behalf of itself only, acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code
24 section 1542.

25 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
27 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

28 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or

1 environmental exposures arising under Proposition 65, nor shall it apply to any of Well
2 Beyond's products other than the Covered Products.

3 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

11 All notices required to be given to either Party to this Consent Judgment by the other shall
12 be in writing and sent to the following agents listed below via first-class mail or via electronic
13 mail where required. Courtesy copies via email may also be sent.

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

15 Chris Heptinstall, Executive Director, Environmental Research Center
16 3111 Camino Del Rio North, Suite 400
17 San Diego, CA 92108
18 Ph: (619) 500-3090
19 Email: chris.heptinstall@erc501c3.org

20 With a copy to:
21 Charles W. Poss
22 Environmental Research Center, Inc.
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108
25 Ph: (619) 500-3090
26 Email: charles.poss@erc501c3.org

27 **FOR WELL BEYOND, LLC:**

28 Jeremy A Reynolds
674 Country Court
North Salt Lake, Utah 84054
Email: jr@well-beyond.com

///

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1 With a copy to:
2 Jason Kerr, Esquire
3 Steven W. Garff, Esquire
4 Price Parkinson & Kerr, PLLC
5 5742 W. Harold Gatty Dr., Suite 101
6 Salt Lake City, UT 84116
7 Ph: (801) 530-2900
8 Email: jasonkerr@ppktrial.com

9
10
11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
19 void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

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

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

2 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
3 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or
4 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
5 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

6 **16. ENFORCEMENT**

7 ERC may, by motion or order to show cause before the Superior Court of Alameda
8 County, enforce the terms and conditions contained in this Consent Judgment. In any action
9 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
10 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
11 To the extent the failure to comply with the Consent Judgment constitutes a violation of
12 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
13 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
14 provided by law for failure to comply with Proposition 65 or other laws.

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

16 **17.1** This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter herein, and any and all
18 prior discussions, negotiations, commitments, and understandings related hereto. No
19 representations, oral or otherwise, express or implied, other than those contained herein have
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
21 herein, shall be deemed to exist or to bind any Party.

22 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment.

24 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

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

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

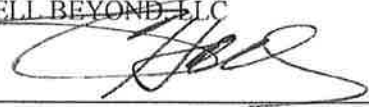
4 (2) Make the findings pursuant to California Health and Safety Code section
5 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7 Dated: 10/19/, 2020


ENVIRONMENTAL RESEARCH
CENTER, INC.
By: 
Chris Hepburn, Executive Director

11 Dated: 10/19, 2020

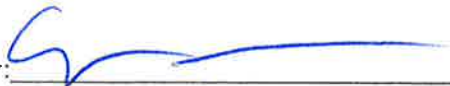
WELL BEYOND LLC

By: STEPHEN J. HILL
Its: FOUNDING PARTNER/COO

15 **APPROVED AS TO FORM:**

16 Dated: October 19, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.
By: 
Charles W. Poss
In-House Counsel

21 Dated: 10/19, 2020

PRICE PARKINSON & KERR, PLLC
By: 
Jason Kerr
Steven W. Garff
Attorney for Defendant Well Beyond,
LLC

28

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2020

Judge of the Superior Court

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EXHIBIT A



Environmental Research Center

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

April 11, 2019

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Well Beyond, LLC

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

- 1. Beyond Shake Balanced Nutrition Meal Replacement Salted Caramel Vanilla - Lead**
- 2. Beyond Shake High-Antioxidant Meal Replacement Dark Chocolate - Lead**
- 3. Beyond Healthy Chocolate Xobiotic Squares – Lead, Cadmium**

April 11, 2019

Page 2

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.

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.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least April 11, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Well Beyond, LLC and its Registered Agents 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 Well Beyond, LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-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 the Executive Director 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 chemicals that are 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: April 11, 2019

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On April 11, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Well Beyond, LLC
807 E South Temple, Ste 101
Salt Lake City, UT 84102

Current President or CEO
Well Beyond, LLC
431 N Neil Armstrong Rd
Salt Lake City, UT 84116

Current President or CEO
Well Beyond, LLC
674 Country Ct
North Salt Lake, UT 84054

Jeremy Reynolds
(Registered Agent for Well Beyond, LLC)
674 Country Ct
North Salt Lake, UT 84054

Current President or CEO
Well Beyond, LLC
9855 Double R Blvd, Ste 220
Reno, NV 89521

Registered Agent Solutions, Inc.
(Registered Agent for Well Beyond, LLC)
4625 W Nevso Dr Ste 2
Las Vegas, NV 89103

On April 11, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On April 11, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

April 11, 2019

Page 5

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

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

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

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

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

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

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

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

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

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

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

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

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

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

Stephan R. Passalacqua, District Attorney
Sonoma County
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

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

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

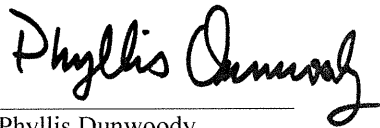
April 11, 2019

Page 6

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

On April 11, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on April 11, 2019, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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, 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
778 Pacific St.
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 4th Floor
Eureka, CA 95501

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

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

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

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

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

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
303 West Third Street
San Bernadino, CA 92415

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, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
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
463 2nd 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 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. The reader is directed to the statute and OEHHA 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 27001.¹ 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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. 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 make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. 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 contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering 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.

² See Section 25501(a)(4).

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 copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

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.

EXHIBIT B



Environmental Research Center

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

February 20, 2020

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

Well Beyond, LLC

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

- 1. Beyond Xe Energy Multiplier Proprietary Blend of Superfruits + Cacao – Lead**
- 2. Beyond Healthy Chocolate Nuggets Dark Chocolate With Acai and Blueberry - Lead**
- 3. Beyond Healthy Chocolate X Power Squares Extreme Dark Chocolate With Acai & Blueberry - 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.

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

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 20, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Well Beyond, LLC 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 Well Beyond, LLC

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-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 the Executive Director 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: February 20, 2020

Chris Heptinstall

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

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

On February 20, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Well Beyond, LLC
807 E South Temple, Ste 101
Salt Lake City, UT 84102

Current President or CEO
Well Beyond, LLC
431 N Neil Armstrong Rd
Salt Lake City, UT 84116

Current President or CEO
Well Beyond, LLC
674 Country Ct
North Salt Lake, UT 84054

Jeremy Reynolds
(Registered Agent for Well Beyond, LLC)
674 Country Ct
North Salt Lake, UT 84054

On February 20, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On February 20, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

February 20, 2020

Page 5

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

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

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

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

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

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

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

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

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

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

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

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

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

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

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

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

Stephan R. Passalacqua, District Attorney
Sonoma County
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

February 20, 2020

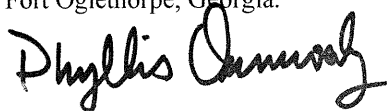
Page 6

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 February 20, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on February 20, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

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, 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
778 Pacific St.
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 4th Floor
Eureka, CA 95501

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

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

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

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

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

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
303 West Third Street
San Bernadino, CA 92415

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

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

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
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
463 2nd 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 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. The reader is directed to the statute and OEHHA 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 27001.¹ 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

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. 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 make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. 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 contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering 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.

² See Section 25501(a)(4).

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 copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

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.