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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

16 **ENVIRONMENTAL RESEARCH**
17 **CENTER, INC., a California non-profit**
18 **corporation**

19 **Plaintiff,**

20 **vs.**

21 **BIOSTEEL SPORTS NUTRITION INC.;**
22 **SMART WAREHOUSING, LLC; and**
23 **DOES 1-100**

24 **Defendants.**

CASE NO. RG19025289

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 1, 2019

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On July 1, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing
28 a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
against Defendants BioSteel Sports Nutrition Inc. (“Biosteel”), Smart Warehousing, LLC and

1 Does 1-100. Subsequently, an Amended Complaint was filed on July 8, 2019 (the operative
2 Complaint referred to hereinafter as the “Complaint”). In this action, ERC alleges that a
3 number of products manufactured, distributed, or sold by BioSteel in California contain lead
4 and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins,
5 and expose consumers to these chemicals at a level requiring a Proposition 65 warning. These
6 products are BioSteel consumables classified as dietary supplements (referred to hereinafter
7 individually as a “Covered Product” or collectively as “Covered Products”) and are listed as
8 follows: (1) Biosteel Natural High Performance Sports Mix Lemon Lime (lead), (2) Biosteel
9 Sports Nutrition Natural High Performance Sports Mix Blue Raspberry (lead), (3) Biosteel
10 Sports Nutrition Sport Greens High Performance Superfood Pineapple Coconut (lead), (4)
11 Biosteel Sports Nutrition Sport Greens High Performance Superfood Acai Lemonade (lead),
12 (5) Biosteel Sports Nutrition Sport Greens High Performance Superfood Pomegranate Berry
13 (lead), (6) Biosteel Sports Nutrition Natural Isolate Protein Chocolate (lead), (7) Biosteel
14 Natural High Performance Sport Mix Orange (lead), (8) Biosteel Sports Nutrition Organic
15 Recovery Plant Protein Vanilla (lead), (9) Biosteel Sports Nutrition Organic Recovery Plant
16 Protein Chocolate (lead), (10) Biosteel Sports Nutrition Plant-Based Protein Vanilla (lead,
17 cadmium), (11) Biosteel Sports Nutrition Plant-Based Protein Natural (lead, cadmium), (12)
18 Biosteel Natural High Performance Sports Mix Mixed Berry (lead), (13) Biosteel Nutritional
19 Bar Original (lead), (14) Biosteel Recovery Formula Chocolate Peanut Butter (lead, cadmium),
20 (15) Biosteel Sports Nutrition Natural Whey Isolate + Plus Chocolate (lead), (16) Biosteel
21 Sports Nutrition Plant-Based Protein Chocolate (lead, cadmium), (17) Biosteel Recovery
22 Formula Vanilla (lead), (18) Biosteel Sports Nutrition Whey Protein Isolate Vanilla (lead), and
23 (19) Biosteel Sports Nutrition Natural High Performance Sports Mix Grape Raisin (lead).

24 **1.2** ERC and BioSteel are hereinafter referred to individually as a “Party” or
25 collectively as the “Parties.”

26 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
27 causes, helping safeguard the public from health hazards by reducing the use and misuse of
28 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,

1 and encouraging corporate responsibility.

2 **1.4** For purposes of this Consent Judgment, the Parties agree that the defendant is a
3 business entity each of which has employed ten or more persons at all times relevant to this
4 action, and qualifies as a “person in the course of doing business” within the meaning of
5 Proposition 65. BioSteel manufactures, distributes, and/or sells the Covered Products.

6 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
7 dated April 11, 2019 and April 18, 2019 that were served on the California Attorney General,
8 other public enforcers, and BioSteel (“Notices”). True and correct copies of the 60-Day Notices
9 dated April 11, 2019 and April 18, 2019 are attached hereto as **Exhibits A and B** respectively,
10 and each is incorporated herein by reference. More than 60 days have passed since the Notices
11 were served on the Attorney General, public enforcers, and BioSteel and no designated
12 governmental entity has filed a Complaint against BioSteel with regard to the Covered
13 Products or the alleged violations. At the time it issued the Notices, ERC had no test results or
14 other information supporting an alleged violation of California Health & Safety Code section
15 25249.6 for any other BioSteel products, other than the Covered Products.

16 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
17 persons in California to lead and/or cadmium without first providing clear and reasonable
18 warnings in violation of California Health and Safety Code section 25249.6. BioSteel denies all
19 material allegations contained in the Notices and Complaint. As of the Effective Date, ERC is
20 not aware of any other BioSteel product, other than the Covered Products, that ERC contends
21 is in violation of California Health and Safety Code section 25249.6.

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

1 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
3 any current or future legal proceeding unrelated to these proceedings.

4 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
5 as a Judgment by this Court.

6 **2. JURISDICTION AND VENUE**

7 For purposes of this Consent Judgment and any further court action that may become
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
9 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
10 over BioSteel as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
11 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
12 claims up through and including the Effective Date which were or could have been asserted in this
13 action based on the facts alleged in the Notices and Complaint.

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

15 **3.1** Beginning sixty (60) days after the Effective Date (the “Compliance Date”),
16 BioSteel shall be permanently enjoined from manufacturing for sale in the State of California,
17 “Distributing into the State of California,” or directly selling in the State of California, any
18 Covered Products which expose a person to a “Daily Lead Exposure Level” of more than 0.5
19 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more than 4.1
20 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

21 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
22 of California” shall mean to directly ship a Covered Product into California for sale in
23 California or to sell a Covered Product to a distributor that BioSteel knows will sell the
24 Covered Product in California.

25 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
26 Level” shall be measured in micrograms, and shall be calculated using the following formula:
27 micrograms of lead per gram of product, multiplied by grams of product per serving of the
28 product (using the largest serving size appearing on the product label), multiplied by servings

1 of the product per day (using the largest number of recommended daily servings appearing on
2 the label), which equals micrograms of lead exposure per day. If the label contains no
3 recommended daily servings, then the number of recommended daily servings shall be one.

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

12 **3.2 Clear and Reasonable Warnings**

13 If BioSteel is required to provide a warning pursuant to Section 3.1, either one of the
14 following warnings must be utilized (“Warning”):

15 **OPTION 1**

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


19 For Option 1, as identified in the brackets, the Warning shall appropriately identify at least
20 one listed chemical (either lead or cadmium) that is present in each of the Covered Products. If a
21 Covered Product contains both lead and cadmium, the Warning may identify lead, cadmium, or
22 both, at BioSteel’s discretion. Where the Warning is being provided for more than one endpoint
23 (cancer and reproductive toxicity) the Warning must include the name of one or more chemicals
24 for each endpoint, unless the named chemical is listed as known to cause both cancer and
25 reproductive toxicity and has been so identified in the Warning.

26 **OPTION 2**

27 Alternatively, BioSteel may elect to use one of the following short form Warnings, as
28 applicable based on whether the Warning must be for cancer, reproductive harm or both:

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 **WARNING: Reproductive Harm** – www.P65Warnings.ca.gov

 **WARNING: Cancer** – www.P65Warnings.ca.gov

 **WARNING: Cancer and Reproductive Harm** – www.P65Warnings.ca.gov

For Option 2, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the word “**WARNING,**” in a size no smaller than the height of the word “**WARNING.**” Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

Regardless of whether Option 1 or Option 2 is used, the Warning shall be securely affixed to or printed upon the container or label of each Covered Product. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold by BioSteel over the internet, the Warning shall appear either (a) on the product’s primary display page either in full text or shall be accessible on the product’s primary display page through a clearly marked hyperlink using the word “**WARNING**” (in all capital and bold letters) so long as the hyperlink goes directly to a page prominently displaying the Option 1 Warning without content that detracts from the Warning, or (b) on the checkout page when a California delivery address is indicated for any purchase of any Covered Product sold directly by BioSteel. If the Warning appears on the checkout page, an asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on BioSteel’s website or on the label or container of BioSteel’s product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

1 BioSteel must display the Warning with such conspicuousness, as compared with other
2 words, statements or designs on the label or container, or on its website, if applicable, to render the
3 Warning likely to be read and understood by an ordinary individual under customary conditions of
4 purchase or use of the product.

5 **3.3 Conforming Covered Products**

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

10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Subject to Section 3.4.7, if BioSteel is not employing a warning system
12 under Section 3.2, beginning within one year of the Effective Date, BioSteel shall arrange for
13 lead and cadmium testing of the Covered Products at least once a year for a minimum of five
14 consecutive years by arranging for testing of five randomly selected samples of each of the
15 Covered Products, in the form intended for sale to the end-user, which BioSteel intends to sell
16 or is manufacturing for sale in California, directly selling to a consumer in California or
17 “Distributing into the State of California.” If tests conducted pursuant to this Section
18 demonstrate that no Warning is required for a Covered Product during each of five consecutive
19 years, then the testing requirements of this Section will no longer be required as to that
20 Covered Product. However, if during or after the five-year testing period, BioSteel changes
21 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
22 Products, BioSteel shall test that Covered Product annually for at least four (4) consecutive
23 years after such change is made.

24 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
25 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five
26 (5) randomly selected samples of the Covered Products will be controlling.

27 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
28 laboratory method that complies with the performance and quality control factors appropriate

1 for the method used, including limit of detection, qualification, accuracy, and precision that
2 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
3 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

4 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
5 independent third party laboratory certified by the California Environmental Laboratory
6 Accreditation Program or an independent third-party laboratory that is registered with the
7 United States Food & Drug Administration.

8 **3.4.5** Nothing in this Consent Judgment shall limit BioSteel’s ability to
9 conduct, or require that others conduct, additional testing of the Covered Products, including
10 the raw materials used in their manufacture.

11 **3.4.6** Within thirty (30) days of ERC’s written request, BioSteel shall deliver
12 lab reports obtained pursuant to Section 3.4 to ERC. BioSteel shall retain all test results and
13 documentation for a period of five years from the date of each test.

14 **3.4.7** The requirements of Section 3.4 do not apply to any Covered Product
15 for which BioSteel has provided the Warning specified in Section 3.2 continuously and
16 uninterrupted after the Compliance Date; however, in the event BioSteel ceases at any time to
17 provide the Warning specified in Section 3.2, BioSteel shall be required to comply with the
18 requirements of Section 3.4 beginning immediately after the date the Warning ceases to be
19 provided or one year after the Effective Date, whichever date is later. Moreover, any
20 laboratory testing that BioSteel asserts is or should be applicable to this Consent Judgment
21 must be or have been conducted in accordance with Sections 3.4.3 and 3.4.4.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement
24 payments, attorney’s fees, and costs, BioSteel shall make a total payment of \$85,000.00
25 (“Total Settlement Amount”) to ERC within 10 days of the date that ERC serves a written
26 “Notice of Entry of the Consent Judgment by the Court” upon BioSteel (“Due Date”). BioSteel
27 shall make this payment by wire transfer to ERC’s account, for which ERC will give BioSteel
28 the necessary account information. The Total Settlement Amount shall be apportioned as

1 follows:

2 **4.2** \$47,268.00 shall be considered a civil penalty pursuant to California Health and
3 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$35,451.00) of the civil penalty to
4 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
5 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
6 Code section 25249.12(c). ERC will retain the remaining 25% (\$11,817.00) of the civil
7 penalty.

8 **4.3** \$4,134.95 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 **4.4** \$24, 201.06 shall be distributed to ERC as an Additional Settlement Payment
11 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
12 and 3204. ERC will utilize the ASP for activities that address the same public harm as
13 allegedly caused by Defendant in this matter. These activities are detailed
14 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
15 chemicals in dietary supplement products in California. ERC’s activities have had, and will
16 continue to have, a direct and primary effect within the State of California because California
17 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
18 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
19 California consumers prior to ingestion of the products.

20 Based on a review of past years’ actual budgets, ERC is providing the following list of
21 activities ERC engages in to protect California consumers through Proposition 65 citizen
22 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
23 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
24 supplement products that may contain lead and/or cadmium and are sold to California
25 consumers. This work includes continued monitoring and enforcement of past consent
26 judgments and settlements to ensure companies are in compliance with their obligations
27 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
28 cadmium. This work also includes investigation of new companies that ERC does not obtain

1 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
2 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
3 companies, developing and maintaining a case file, testing products from these companies,
4 providing the test results and supporting documentation to the companies, and offering
5 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
6 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
7 Lead?" Program which reduces the numbers of contaminated products that reach California
8 consumers by providing access to free testing for lead in dietary supplement products (Products
9 submitted to the program are screened for ingredients which are suspected to be contaminated,
10 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
11 the results shared with the consumer that submitted the product).

12 ERC shall be fully accountable in that it will maintain adequate records to document
13 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
14 are being spent only for the proper, designated purposes described in this Consent Judgment.
15 ERC shall provide the Attorney General, within thirty days of any request, copies of
16 documentation demonstrating how such funds have been spent.

17 4.5 \$9,395.99 shall be distributed to ERC for its in-house legal fees. Except as
18 explicitly provided herein, each Party shall bear its own fees and costs.

19 4.6 In the event that BioSteel fails to remit the Total Settlement Amount owed
20 under Section 4 of this Consent Judgment on or before the Due Date, BioSteel shall be deemed
21 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
22 written notice of the delinquency to BioSteel via electronic mail. If BioSteel fails to deliver
23 the Total Settlement Amount within five (5) days from the written notice, the Total Settlement
24 Amount shall accrue interest at the statutory judgment interest rate provided in the California
25 Code of Civil Procedure section 685.010. Additionally, BioSteel agrees to pay ERC's
26 reasonable attorney's fees and costs for any efforts to collect the payment due under this
27 Consent Judgment.

28 **5. MODIFICATION OF CONSENT JUDGMENT**

1 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
2 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
3 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
4 modified consent judgment.

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

17 **5.3** In the event that BioSteel initiates or otherwise requests a modification under
18 Section 5.1, and the meet and confer process leads to a joint motion or application for a
19 modification of the Consent Judgment, BioSteel shall reimburse ERC its costs and reasonable
20 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the
21 motion or application.

22 **5.4** Where the meet-and-confer process does not lead to a joint motion or
23 application in support of a modification of the Consent Judgment, then either Party may seek
24 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
25 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure
26 section 1021.5.

27 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
28 **JUDGMENT**

1 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
2 terminate this Consent Judgment.

3 **6.2** If ERC makes a California purchase of a Covered Product which was
4 manufactured after the Compliance Date, and ERC alleges that that Covered Product fails to
5 qualify as a Conforming Covered Product (for which ERC alleges that no Warning has been
6 provided), then ERC shall inform BioSteel in a reasonably prompt manner of its test results and
7 all other information in its possession that will assist BioSteel in identifying the source of the
8 Covered Product at issue. BioSteel shall, within thirty (30) days following such notice, respond
9 to ERC with information about the manufacture date and distribution history and, if applicable
10 under Section 3.4.7, provide ERC with testing information, from an independent third-party
11 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating BioSteel's
12 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter
13 prior to ERC taking any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

22 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
23 on behalf of itself and in the public interest, and BioSteel and its respective officers, directors,
24 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
25 franchisees, licensees, customers (not including private label customers of BioSteel),
26 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
27 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
28 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,

1 hereby fully releases and discharges the Released Parties from any and all claims, actions,
2 causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited
3 to attorneys' fees, investigations fees, and expert fees), costs, and expenses (collectively
4 "Claims") asserted, or that could have been asserted from the handling, use, or consumption of
5 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
6 regulations arising from the failure to provide Proposition 65 warnings on the Covered
7 Products regarding lead and/or cadmium up to and including the Compliance Date.

8 **8.2** ERC, on behalf of itself and its respective owners, principals, shareholders,
9 officers, directors, employees, agents, parents, subsidiaries, successors, assigns and legal
10 representatives, (collectively referred to as the "ERC Releasers") and not on behalf of the
11 general public, hereby waives and releases the Released Parties from any and all Claims that
12 were asserted, or that could have been asserted, for any alleged violations of any other
13 statutory or common law arising from alleged exposures to lead or cadmium in the Covered
14 Products manufactured, distributed or sold by BioSteel before the Compliance Date.

15 **8.3** ERC on its own behalf only, and BioSteel on its own behalf only, further
16 waive and release any and all Claims they may have against each other for all actions or
17 statements made or undertaken in the course of seeking or opposing enforcement of
18 Proposition 65 in connection with the Notices and Complaint up through and including the
19 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
20 right to seek to enforce the terms of this Consent Judgment.

21 **8.4** It is possible that other Claims not known to the Parties, arising out of the facts
22 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
23 discovered. ERC on behalf of itself only, and BioSteel on behalf of itself only, acknowledge
24 that this Consent Judgment is expressly intended to cover and include all such Claims up
25 through and including the Effective Date, including all rights of action therefore. ERC and
26 BioSteel acknowledge that the Claims released in Sections 8.1, 8.2 and 8.3 above may include
27 unknown Claims, and nevertheless waive California Civil Code section 1542 as to any such
28 unknown Claims. California Civil Code section 1542 reads as follows:

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

8 ERC on behalf of itself only, and BioSteel on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

11 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
13 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

14 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of BioSteel's
16 products other than the Covered Products.

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

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

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

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

1 Ph: (619) 500-3090
2 Email: chris.heptinstall@erc501c3.org
3 With a copy to:
4 Charles W. Poss
5 Environmental Research Center, Inc.
6 3111 Camino Del Rio North, Suite 400
7 San Diego, CA 92108
8 Ph: (619) 500-3090
9 Email: charles.poss@erc501c3.org

10 **FOR BIOSTEEL SPORTS NUTRITION INC.:**

11 John Celenza
12 CEO
13 BioSteel Sports Nutrition Inc.
14 87 Wingold Ave., Unit 1
15 Toronto, ON M6B 1P8
16 Canada
17 Ph: +1 (416) 322-7830
18 Email: jcelenza@biosteel.com

19 With a copy to:
20 Kerry E. Shea, Esq.
21 Davis Wright Tremaine LLP
22 505 Montgomery Street Ste. 800
23 San Francisco, CA 94111
24 Ph: (415) 276-6598
25 E-mail: kerryshea@dwt.com

26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
Consent Judgment.

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

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

13. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
2 as the original signature.

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

18 ERC may, by motion or order to show cause before the Superior Court of Alameda
19 County, enforce the terms and conditions contained in this Consent Judgment. In any action
20 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
21 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
22 To the extent the failure to comply with the Consent Judgment constitutes a violation of
23 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
24 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
25 provided by law for failure to comply with Proposition 65 or other laws.

26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter herein, and any and all

1 prior discussions, negotiations, commitments, and understandings related hereto. No
2 representations, oral or otherwise, express or implied, other than those contained herein have
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
4 herein, shall be deemed to exist or to bind any Party.

5 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

7 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
8 **CONSENT JUDGMENT**

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

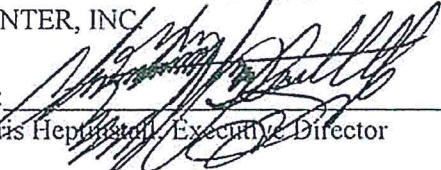
12 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
13 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
14 been diligently prosecuted, and that the public interest is served by such settlement; and

15 (2) Make the findings pursuant to California Health and Safety Code section
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

18
19 Dated: 8/14/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC

20
21 By: 
22 Chris Hepburn, Executive Director

23 Dated: 8/15, 2019


BIOSTEEL SPORTS NUTRITION INC.

24
25 
26 By: John Celenza
27 Its: CEO
28

1
2 **APPROVED AS TO FORM:**

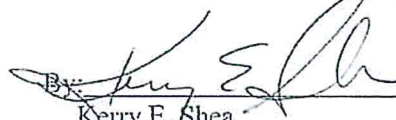
3
4 Dated: August 15, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: 
8 Charles W. Poss
9 In-House Counsel

10 Dated: 8/15, 2019

DAVIS WRIGHT TREMAJNE LLP

11
12 By: 
13 Kerry E. Shea
14 Attorney for BioSteel Sports Nutrition Inc.

15 **ORDER AND JUDGMENT**

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19
20 Dated: _____, 2019

21 Judge of the Superior Court

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 Violators 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**BioSteel Sports Nutrition Inc.
Smart Warehousing, 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. Biosteel Natural High Performance Sports Mix - Lead

2. **Biosteel Natural High Performance Sports Mix Lemon Lime - Lead**
3. **Biosteel Sports Nutrition Natural High Performance Sports Mix Blue Raspberry - Lead**
4. **Biosteel Sports Nutrition Sport Greens High Performance Superfood Pineapple Coconut - Lead**
5. **Biosteel Sports Nutrition Sport Greens High Performance Superfood Acai Lemonade - Lead**
6. **Biosteel Sports Nutrition Sport Greens High Performance Superfood Pomegranate Berry – Lead**
7. **Biosteel Sports Nutrition Natural Isolate Protein Chocolate - Lead**
8. **Biosteel Natural High Performance Sport Mix Orange - Lead**
9. **Biosteel Sports Nutrition Organic Recovery Plant Protein Vanilla - Lead**
10. **Biosteel Sports Nutrition Organic Recovery Plant Protein Chocolate - Lead**
11. **Biosteel Sports Nutrition Plant-Based Protein Vanilla - Lead, Cadmium**
12. **Biosteel Sports Nutrition Plant-Based Protein Natural – Lead, Cadmium**

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 Violators violated Proposition 65 because they 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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the

April 11, 2019

Page 3

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 BioSteel Sports Nutrition Inc., Smart Warehousing, 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 BioSteel Sports Nutrition Inc. and Smart Warehousing, LLC

I, Chris Heptinstall, declare:

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

2. I am 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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



Dated: 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
BioSteel Sports Nutrition Inc.
1-87 Wingold Avenue
North York, ON M6B 1P8
Canada

Current President or CEO
BioSteel Sports Nutrition Inc.
90 Wingold Avenue
Toronto, ON M6B 1P5
Canada

Current President or CEO
Smart Warehousing, LLC
18905 Kill Creek Rd
Edgerton, KS 66021

LJ Wasinger
(Registered Agent for Smart Warehousing, LLC)
1869 N Topping Avenue
Kansas City, MO 64120

Current President or CEO
Smart Warehousing, LLC
16500 E. Truman Rd
Independence, MO 64050

Carl Wasinger
(Registered Agent for Smart Warehousing, LLC)
18905 Kill Creek Rd
Edgerton, KS 66021

Paul Robbin
(Registered Agent for Smart Warehousing, LLC)
1545 E Locust St
Ontario, CA 91761

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:

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

April 11, 2019

Page 6

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

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
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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

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

April 11, 2019

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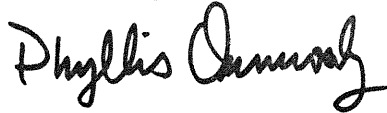
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

Jeff W. Reising, 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

April 18, 2019

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I 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 Violators 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 Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

BioSteel Sports Nutrition Inc.
Smart Warehousing, 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. **Biosteel Natural High Performance Sports Mix Mixed Berry - Lead**
2. **Biosteel Nutritional Bar Original - Lead**
3. **Biosteel Recovery Formula Chocolate Peanut Butter – Lead, Cadmium**
4. **Biosteel Sports Nutrition Natural Whey Isolate + Plus Chocolate - Lead**
5. **Biosteel Sports Nutrition Plant-Based Protein Chocolate – Lead, Cadmium**
6. **Biosteel Recovery Formula Vanilla - Lead**
7. **Biosteel Sports Nutrition Whey Protein Isolate Vanilla - Lead**
8. **Biosteel Sports Nutrition Natural High Performance Sports Mix Grape Raisin - 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.

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 18, 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 Violators violated Proposition 65 because they 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 Violators 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

April 18, 2019

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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 BioSteel Sports Nutrition Inc., Smart Warehousing, 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 BioSteel Sports Nutrition Inc. and Smart Warehousing, LLC

I, Chris Heptinstall, declare:

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

2. I am 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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



Dated: April 18, 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 18, 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
BioSteel Sports Nutrition Inc.
1-87 Wingold Avenue
North York, ON M6B 1P8
Canada

Current President or CEO
BioSteel Sports Nutrition Inc.
90 Wingold Avenue
Toronto, ON M6B 1P5
Canada

Current President or CEO
Smart Warehousing, LLC
18905 Kill Creek Rd
Edgerton, KS 66021

LJ Wasinger
(Registered Agent for Smart Warehousing, LLC)
1869 N Topping Avenue
Kansas City, MO 64120

Current President or CEO
Smart Warehousing, LLC
16500 E. Truman Rd
Independence, MO 64050

Carl Wasinger
(Registered Agent for Smart Warehousing, LLC)
18905 Kill Creek Rd
Edgerton, KS 66021

Paul Robbin
(Registered Agent for Smart Warehousing, LLC)
1545 E Locust St
Ontario, CA 91761

On April 18, 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 18, 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** 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:

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

April 18, 2019

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

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891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District Attorney
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Martinez, CA 94553
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Thomas L. Hardy, District Attorney
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Independence, CA 93526
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator
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mlatimer@co.lassen.ca.us

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

Allison Haley, District Attorney
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CEPD@countyofnapa.org

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Riverside, CA 92501
Prop65@rivcoda.org

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

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

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

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

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

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

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

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

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

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

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

April 18, 2019

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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

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

On April 18, 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 18, 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
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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

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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
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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.