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Attorney for Defendants DAS Labs, LLC and Bucked Up, LLC

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

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

**Plaintiff,**

**vs.**

**DAS LABS LLC, individually and dba  
BUCKED UP; BUCKED UP, LLC and  
DOES 1-100**

**Defendants.**

**CASE NO. RG19043611**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 18, 2019

Trial Date: None set

**1. INTRODUCTION**

**1.1** On November 18, 2019, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing 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"),

1 against DAS Labs LLC, individually and dba Bucked Up and Bucked Up, LLC (collectively  
2 “DAS Labs<sup>1</sup>”) and Does 1-100. Subsequently, on December 26, 2019, ERC filed a First  
3 Amended Complaint for Injunctive and Declaratory Relief and Civil Penalties (the operative  
4 Complaint, referred to hereafter as the “Complaint”) pursuant to the provisions of Proposition  
5 65, against DAS Labs and Does 1-100. In this action, ERC alleges that a number of products  
6 manufactured, distributed, or sold by DAS Labs contain lead, a chemical listed under Proposition  
7 65 as a carcinogen and reproductive toxin, and have exposed consumers to this chemical at a  
8 level requiring a Proposition 65 warning. These products (referred to hereinafter individually as  
9 a “Covered Product” or collectively as “Covered Products”) are: (1) Bucked Up Pre-Workout  
10 Grape Gainz, (2) Bucked Up Keto Protein Vanilla, (3) Buck Feed Protein Chocolate, (4) Bucked  
11 Up Pre-Workout Gym N' Juice, (5) Bucked Up Pre-Workout Blood Raz, (6) Bucked Up Pre-  
12 Workout Blue Raz, (7) Woke AF Pre-Workout Grape Gainz, (8) Bucked Up Pre-Workout Killa  
13 OJ (9) Bucked Up Keto Protein Chocolate, (10) BAMF Nootropic Preworkout Strawberry Kiwi,  
14 (11) Bucked Up Racked Branched Chain Amino Acids Intra-Workout Peach Mango, (12)  
15 Bucked Up Racked Branched Chain Amino Acids Intra-Workout Piña Colada, (13) Woke AF  
16 High-Stimulant Pre-Workout 'Merica Rocket Pop, (14) BAMF High-Stimulant Nootropic  
17 Preworkout Gym N' Juice, (15) Bucked Up CL Exclusive All-Natural Pre-Workout Pink  
18 Lemonade, (16) Bucked Up CL Exclusive All-Natural Pre-Workout Blueberry Pomegranate,  
19 (17) Bucked UP Stag Multivitamin, (18) Bucked Up Pre-Workout Watermelon, (19) Bucked Up  
20 Non-Stimulant Pre-Workout Raspberry Lime Ricky, (20) Bucked Up CL Exclusive Pre-  
21 Workout Sour Watermelon, (21) Bucked Up Pre-Workout Strawberry Kiwi, (22) Woke AF  
22 High-Stimulant Pre-Workout Killa OJ, (23) Bucked Up Organic Greens Unflavored, (24)  
23 Bucked Up Organic Greens Mixed Berry, (25) Woke AF High-Stimulant Blood Raz, (26) Woke  
24 AF High-Stimulant Blue Raz, (27) Bucked Up CL Exclusive Nursing Support, (28) Exogenous  
25 Ketones Raspberry Lemonade Flavor, (29) Bucked Up Non-Stimulant Pre-Workout Grape  
26  
27

28 <sup>1</sup> References to “DAS Labs” in Sections 3, 4 and 6 shall include Bucked Up, LLC only at times that Bucked Up, LLC qualifies as a “person in the course of doing business” and is engaged in manufacturing, distributing and/or selling the Covered Products.



1 Gainz, (30) Bucked Up Non-Stimulant Pre-Workout Pink Lemonade, (31) Exogenous Ketones  
2 Orange-Mango Flavor, (32) BAMF High-Stimulant Nootropic Preworkout Pump N' Grind, (33)  
3 Bucked Up Racked Branched Chain Amino Acids Intra-Workout Grape Flavor, and (34) BAMF  
4 High-Stimulant Nootropic Preworkout Blue Raz. The term "Covered Products" includes  
5 Covered Products that are repackaged but that otherwise remain the same product. The term  
6 "Coverd Products" also includes all forms of delivery of the Covered Products including bulk,  
7 individual container, stick pack sample, and energy pack sample, so long as the only change to  
8 the Covered Product is the form of delivery.

9 **1.2** ERC and DAS Labs are hereinafter referred to individually as a "Party" or  
10 collectively as the "Parties."

11 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
12 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
14 and encouraging corporate responsibility.

15 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a  
16 business entity and qualifies as a "person in the course of doing business" within the meaning of  
17 Proposition 65. DAS Labs manufactures, distributes, and/or sells the Covered Products.

18 **1.5** The Complaint is based on allegations contained in ERC's Notices of Violation  
19 dated September 6, 2019 and October 16, 2019, both of which were served on the California  
20 Attorney General, other public enforcers, and DAS Labs (the "First and Second Notices").  
21 True and correct copies of the First and Second Notices, dated September 6, 2019 and October  
22 16, 2019, are attached hereto as **Exhibits A and B**, respectively and are incorporated herein by  
23 reference. More than 60 days have passed since the First and Second Notices were served on  
24 the Attorney General, public enforcers, and DAS Labs and no designated governmental entity  
25 has filed a Complaint against DAS Labs with regard to the Covered Products or the alleged  
26 violations.

27 **1.6** On December 30, 2019, ERC served a third Notice of Violation on the California  
28 Attorney General, other public enforcers, and DAS Labs (the "Third Notice"). A true and correct

1 copy of the Third Notice is attached hereto as **Exhibit C** and incorporated herein by reference.  
2 On January 14, 2020, ERC served a fourth Notice of Violation on the California Attorney  
3 General, other public enforcers, and DAS Labs (the “Fourth Notice”). A true and correct copy  
4 of the Fourth Notice is attached hereto as **Exhibit D** and incorporated herein by reference. The  
5 parties stipulate that the Complaint shall be deemed amended as of March 25, 2020 to include  
6 the products set forth in ERC’s Third Notice and Fourth Notice and that references hereinafter  
7 to the Complaint refer to the Complaint as deemed amended. This Consent Judgment applies to  
8 all Covered Products set forth in Paragraph 1.1, effective 60 days after January 14, 2020,  
9 provided no public enforcer is diligently pursuing the allegations set forth in ERC’s Third Notice  
10 and Fourth Notice. On March 25, 2020 more than 60 days will have passed since ERC’s Third  
11 Notice and Fourth Notice were served on the Attorney General, public enforcers, and DAS Labs.

12 **1.7** The First and Second Notices, the Third Notice and the Fourth Notice are  
13 hereafter collectively referred to as the “Notices.”

14 **1.8** ERC’s Notices and Complaint allege that use of the Covered Products exposes  
15 persons in California to lead without first providing clear and reasonable warnings in violation  
16 of California Health and Safety Code section 25249.6. DAS Labs denies all material  
17 allegations contained in the Notices and Complaint.

18 **1.9** The Parties have entered into this Consent Judgment in order to settle,  
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
20 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
21 or be construed as an admission by any of the Parties or by any of their respective officers,  
22 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
23 franchisees, licensees, customers, suppliers, distributors, wholesalers, manufacturers,  
24 producers, or retailers of any fact, issue of law, or violation of law.

25 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall  
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
27 any current or future legal proceeding unrelated to these proceedings.

28 **1.11** The Effective Date of this Consent Judgment is the date on which it is entered



1 as a Judgment by this Court.

## 2 **2. JURISDICTION AND VENUE**

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

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

11 **3.1** Beginning on the Effective Date, DAS Labs shall be permanently enjoined  
12 from manufacturing for sale in the State of California, "Distributing into the State of California,"  
13 or directly selling in the State of California, any Covered Product which exposes a person to a  
14 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the  
15 warning requirements under Section 3.2.

16 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
17 of California" shall mean to directly ship a Covered Product into California for sale in  
18 California or to sell a Covered Product to a distributor that DAS Labs knows or has reason to  
19 know will sell the Covered Product in California.

20 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
21 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
23 product (using the largest serving size appearing on the product label), multiplied by servings  
24 of the product per day (using the largest number of recommended daily servings appearing on  
25 the label), which equals micrograms of lead exposure per day. If the label contains no  
26 recommended daily servings, then the number of recommended daily servings shall be one.

## 27 **3.2 Clear and Reasonable Warnings**

28 If DAS Labs is required to provide a warning pursuant to Section 3.1, one of the following

warnings must be utilized (“Warning”):

**OPTION 1:**

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

or

**OPTION 2:**



DAS Labs shall use the phrase “cancer and” in the OPTION 1 Warning or replace the phrase “Reproductive Harm” with the phrase “Cancer and Reproductive Harm” in the OPTION 2 Warning if DAS Labs has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if DAS Labs has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

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 over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning. In no event shall any internet or website Warning be contained in or made through a link.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of DAS Labs’ product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No



1 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
2 average lay person shall accompany the Warning. Further, no statements may accompany the  
3 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
4 less harmful effect of the listed chemical.

5 DAS Labs must display the above Warning with such conspicuousness, as compared with  
6 other words, statements or designs on the label or container, or on its website, if applicable, to  
7 render the Warning likely to be read and understood by an ordinary individual under customary  
8 conditions of purchase or use of the product.

### 9 **3.3 Conforming Covered Products**

10 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
11 Level” is no greater than 0.5 micrograms of lead per day as determined by the quality control  
12 methodology described in Section 3.4.

### 13 **3.4 Testing and Quality Control Methodology**

14 **3.4.1** Beginning within one year of the Effective Date, DAS Labs shall  
15 arrange for lead testing of the Covered Products at least once a year for a minimum of five  
16 consecutive years by arranging for testing of five randomly selected samples of each of the  
17 Covered Products, in the form intended for sale to the end-user, which DAS Labs intends to  
18 sell or is manufacturing for sale in California, directly selling to a consumer in California or  
19 “Distributing into the State of California.” If tests conducted pursuant to this Section  
20 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
21 years, then the testing requirements of this Section will no longer be required as to that  
22 Covered Product. However, if during or after the five-year testing period, DAS Labs changes  
23 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered  
24 Products, DAS Labs shall test that Covered Product annually for at least four (4) consecutive  
25 years after such change is made.

26 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
27 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
28 controlling.

1           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
2 laboratory method that complies with the performance and quality control factors appropriate  
3 for the method used, including limit of detection, qualification, accuracy, and precision that  
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

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

13           **3.4.6** Within thirty (30) days of ERC’s written request, or later if agreed upon  
14 in writing by the Parties, DAS Labs shall deliver lab reports obtained pursuant to Section 3.4 to  
15 ERC. DAS Labs shall retain all test results and documentation for a period of five years from  
16 the date of each test.

#### 17   **4. SETTLEMENT PAYMENT**

18           **4.1** In full satisfaction of all potential civil penalties, additional settlement  
19 payments, attorney’s fees, and costs, DAS Labs shall make a total payment of \$150,000.00  
20 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). DAS  
21 Labs shall make this payment by wire transfer to ERC’s account, for which ERC will give  
22 DAS Labs the necessary account information. The Total Settlement Amount shall be  
23 apportioned as follows:

24           **4.2** \$100,000.00 shall be considered a civil penalty pursuant to California Health  
25 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$75,000.00) of the civil penalty  
26 to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
28 Code section 25249.12(c). ERC will retain the remaining 25% (\$25,000.00) of the civil



1 penalty.

2       **4.3**     \$8,115.21 shall be distributed to ERC as reimbursement to ERC for reasonable  
3 costs incurred in bringing this action.

4       **4.4**     \$22,470.60 shall be distributed to ERC as an Additional Settlement Payment  
5 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
6 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
7 allegedly caused by Defendant in this matter. These activities are detailed  
8 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic  
9 chemicals in dietary supplement products in California. ERC’s activities have had, and will  
10 continue to have, a direct and primary effect within the State of California because California  
11 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary  
12 supplements and/or by providing clear and reasonable warnings to California consumers prior  
13 to ingestion of the products.

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

1 contaminated products that reach California consumers by providing access to free testing for  
2 lead in dietary supplement products (Products submitted to the program are screened for  
3 ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
4 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
5 that submitted the product).

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

11 **4.5** \$19,414.19 shall be distributed to ERC for its in-house legal fees. Except as  
12 explicitly provided herein, each Party shall bear its own fees and costs.

13 **4.6** In the event that DAS Labs fails to remit the Total Settlement Amount owed  
14 under Section 4 of this Consent Judgment on or before the Due Date, DAS Labs shall be  
15 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
16 provide written notice of the delinquency to DAS Labs via electronic mail. If DAS Labs fails  
17 to deliver the Total Settlement Amount within five (5) days from the written notice, the Total  
18 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the  
19 California Code of Civil Procedure section 685.010. Additionally, DAS Labs agrees to pay  
20 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under  
21 this Consent Judgment.

## 22 **5. MODIFICATION OF CONSENT JUDGMENT**

23 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
24 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
25 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
26 modified Consent Judgment.

27 **5.2** If DAS Labs seeks to modify this Consent Judgment under Section 5.1, then  
28 DAS Labs must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks



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

11 **5.3** In the event that DAS Labs initiates or otherwise requests a modification under  
12 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
13 modification of the Consent Judgment, DAS Labs shall reimburse ERC its costs and reasonable  
14 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the  
15 motion or application.

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

18 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
19 terminate this Consent Judgment.

20 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
21 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
22 inform DAS Labs in a reasonably prompt manner of its test results, including information  
23 sufficient to permit DAS Labs to identify the Covered Products at issue. DAS Labs shall,  
24 within thirty (30) days following such notice, or at a later time if agreed upon in writing by the  
25 Parties, provide ERC with testing information, from an independent third-party laboratory  
26 meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating DAS Labs' compliance  
27 with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC  
28 taking any further legal action.

1     **7.     APPLICATION OF CONSENT JUDGMENT**

2             This Consent Judgment applies to, is binding upon, and benefits the Parties and their  
3     respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
4     divisions, suppliers, franchisees, licensees, customers (excluding private labelers), distributors,  
5     wholesalers, retailers, manufacturers, producers, predecessors, successors, and assigns. This  
6     Consent Judgment has no application to any Covered Product that is distributed or sold  
7     exclusively outside the State of California and that is not used by California consumers.

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

9             **8.1**             This Consent Judgment is a full, final, and binding resolution between ERC,  
10     on behalf of itself and in the public interest, and DAS Labs and its respective officers,  
11     directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
12     franchisees, licensees, customers (not including private label customers of DAS Labs),  
13     distributors, wholesalers, retailers, manufacturers, producers, and all other upstream and  
14     downstream entities in the distribution chain of any Covered Product, and the predecessors,  
15     successors, and assigns of any of them (collectively, “Released Parties”). On behalf of itself  
16     and in the public interest, ERC hereby fully releases and discharges the Released Parties from  
17     any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,  
18     fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or  
19     consumption of the Covered Products, as to any alleged violation of Proposition 65 or its  
20     implementing regulations arising from the failure to provide Proposition 65 warnings on the  
21     Covered Products regarding lead up to and including the Effective Date.

22             **8.2**             ERC, on its own behalf only, and DAS Labs, on its own behalf only, further  
23     waive and release any and all claims they may have against each other for all actions or  
24     statements made or undertaken in the course of seeking or opposing enforcement of  
25     Proposition 65 in connection with the Notices and Complaint up through and including the  
26     Effective Date, but nothing in Section 8 affects or limits any Party’s right to seek to enforce the  
27     terms of this Consent Judgment.

28             **8.3**             It is possible that other claims not known to the Parties, arising out of the facts



1 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
2 discovered. ERC, on behalf of itself only, and DAS Labs, on behalf of itself only, acknowledge  
3 that this Consent Judgment is expressly intended to cover and include all such claims up  
4 through and including the Effective Date, including all rights of action therefore. ERC and  
5 DAS Labs acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
6 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
7 unknown claims. California Civil Code section 1542 reads as follows:

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

12 ERC, on behalf of itself only, and DAS Labs, on behalf of itself only, acknowledge and  
13 understand the significance and consequences of this specific waiver of California Civil Code  
14 section 1542.

15 **8.4** Compliance with the terms of this Consent Judgment constitutes compliance  
16 with Proposition 65 by any of the Released Parties regarding alleged exposures to lead in the  
17 Covered Products as set forth in the Notices and Complaint.

18 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
19 environmental exposures arising under Proposition 65, nor shall it apply to any of DAS Labs'  
20 products other than the Covered Products.

## 21 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

22 In the event that any of the provisions of this Consent Judgment are held by a court to be  
23 unenforceable, the validity of the remaining enforceable provisions remain unaffected.

## 24 **10. GOVERNING LAW**

25 The terms and conditions of this Consent Judgment are governed by and construed in  
26 accordance with the laws of the State of California.

## 27 **11. PROVISION OF NOTICE**

28 All notices required to be given to either Party to this Consent Judgment by the other shall

1 be in writing and sent to the following agents listed below via first-class mail or via electronic  
2 mail where required. Courtesy copies via email may also be sent.

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

4 Chris Heptinstall, Executive Director, Environmental Research Center  
5 3111 Camino Del Rio North, Suite 400  
6 San Diego, CA 92108  
7 Ph: (619) 500-3090  
8 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

9 With a copy to:  
10 Charles W. Poss  
11 Environmental Research Center, Inc.  
12 3111 Camino Del Rio North, Suite 400  
13 San Diego, CA 92108  
14 Ph: (619) 500-3090  
15 Fax: (706) 858-0326  
16 Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

17 **FOR DAS LABS LLC, individually and dba BUCKED UP and BUCKED UP, LLC:**

18 Ryan Gardner  
19 781 South Automall Drive, Suite 102  
20 American Fork, Utah 84003  
21 Email: [ryan@buckedup.com](mailto:ryan@buckedup.com)

22 With a copy to:  
23 Phillip Hadfield  
24 781 South Automall Drive, Suite 102  
25 American Fork, Utah 84003  
26 Email: [phil@buckedup.com](mailto:phil@buckedup.com)

27 and

28 Tyler R. Cahoon  
Durham Jones & Pinegar, P.C.  
111 South Main Street, Suite 2400  
Salt Lake City, UT 84111  
Email: [tcagoon@djplaw.com](mailto:tcagoon@djplaw.com)

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
Motion for Court Approval. The Parties shall cooperate and 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 cooperate and 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 constitute one original document. A facsimile or .pdf signature is valid as the original signature.

### **14. DRAFTING**

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

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

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

### **16. ENFORCEMENT**

ERC may, by motion or order to show cause before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

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

**17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

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///

///

///

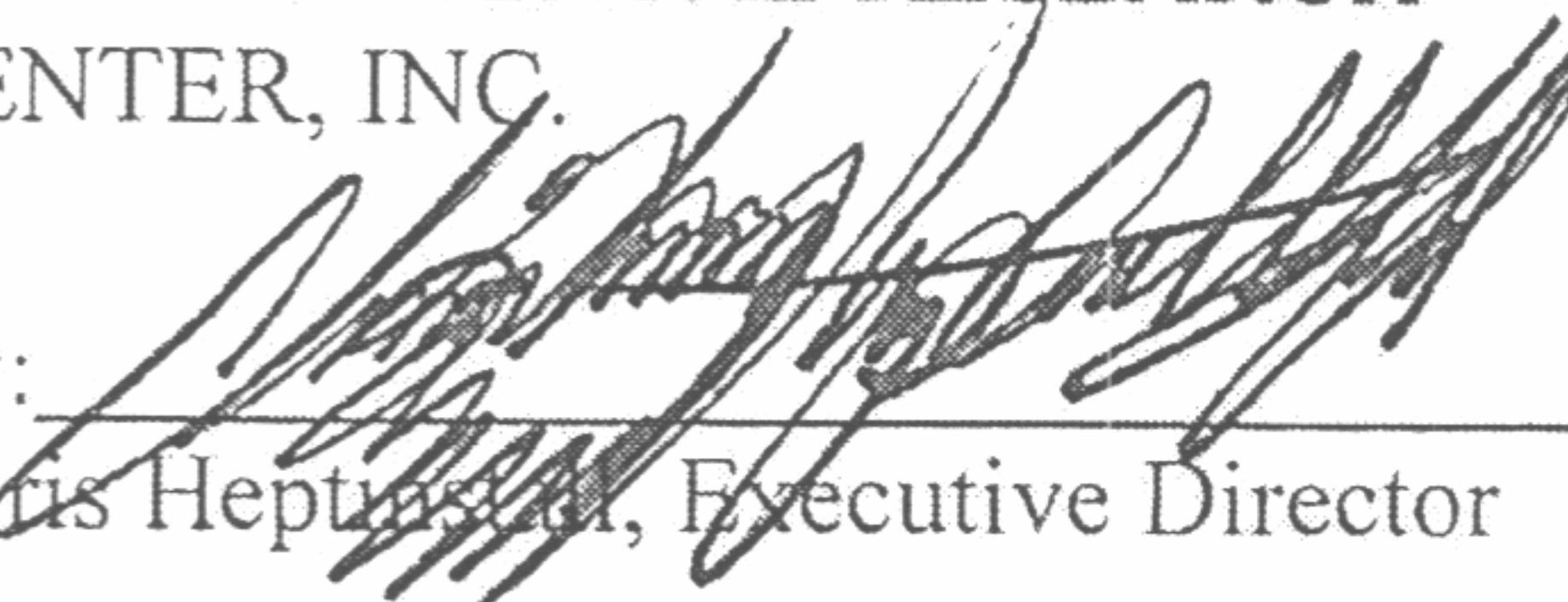
///



1 IT IS SO STIPULATED:

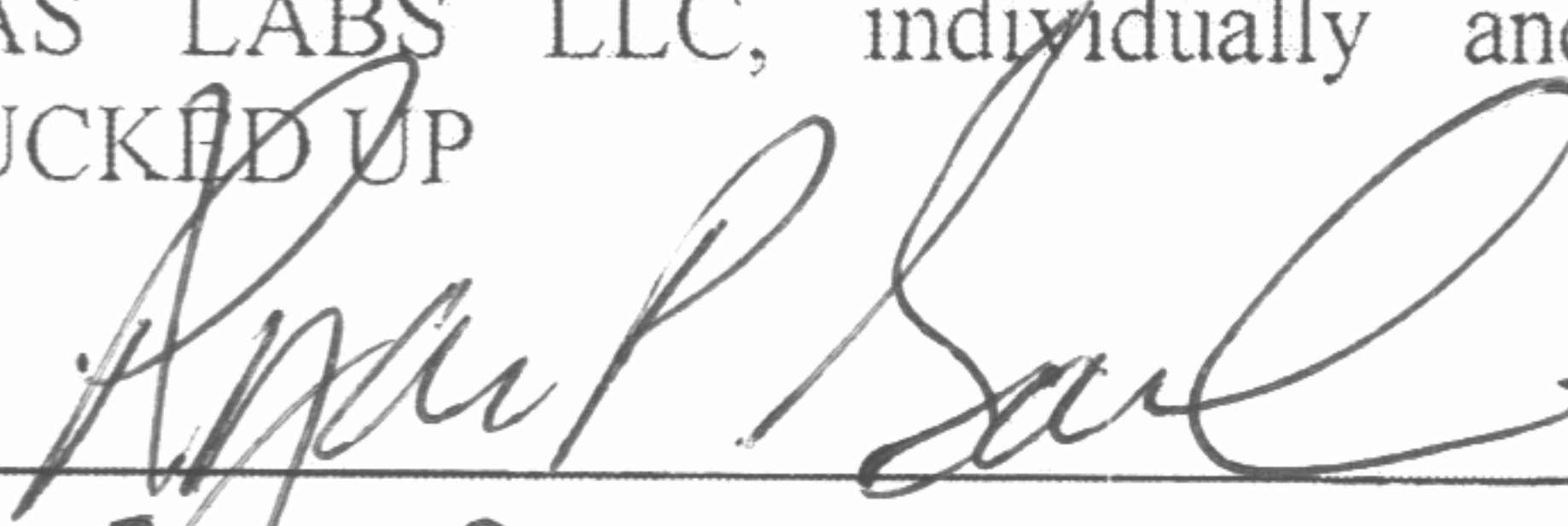
2 Dated: 1/31/, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

4 By:   
Chris Heptinstall, Executive Director


6 Dated: 2/3/, 2020

DAS LABS LLC, individually and dba  
BUCKED UP

8   
9 By: Ryan P. Gardner  
Its: Manager

11 Dated: 2/3/, 2020


BUCKED UP, LLC

13   
14 By: Ryan P. Gardner  
Its: Manager

15 APPROVED AS TO FORM:

16 Dated: January 31, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

18   
19 By: \_\_\_\_\_  
Charles W. Poss  
In-House Counsel

21 Dated: \_\_\_\_\_, 2020


DURHAM JONES & PINEGAR, P.C.

23 By: \_\_\_\_\_  
David W. Tufts  
Attorney for DAS Labs, LLC and Bucked  
Up, LLC

1 IT IS SO STIPULATED:

2 Dated: 1/31/, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Hepburn, Executive Director

6 Dated: 2/3/, 2020

DAS LABS LLC, individually and cba  
BUCKED UP

By:  
Its:

11 Dated: 2/3/, 2020


BUCKED UP, LLC

By:  
Its:

15 APPROVED AS TO FORM:

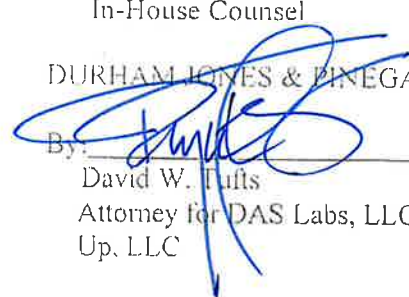
16 Dated: January 31, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Charles W. Poss  
In-House Counsel

21 Dated: 2/5/20, 2020

DURHAM JONES & PINEGAR, P.C.

By:   
David W. Tufts  
Attorney for DAS Labs, LLC and Bucked  
Up, LLC



**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2020

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

# **EXHIBIT A**





## Environmental Research Center

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

September 6, 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:

**DAS Labs LLC, individually and dba Bucked Up  
Bucked Up, LLC**

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

**1. Bucked Up Pre-Workout Grape Gainz - Lead**

2. **Bucked Up Keto Protein Vanilla - Lead**
3. **Buck Feed Protein Chocolate - Lead**
4. **Bucked Up Pre-Workout Gym N' Juice - Lead**
5. **Bucked Up Pre-Workout Blood Raz - Lead**
6. **Bucked Up Pre-Workout Blue Raz - Lead**
7. **Woke AF Pre-Workout Grape Gainz - Lead**
8. **Bucked Up Pre-Workout Killa OJ - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least September 6, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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



September 6, 2019

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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 DAS Labs LLC, individually and dba Bucked Up, Bucked Up, LLC and their 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 DAS Labs LLC, individually and dba Bucked Up; Bucked Up, 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 chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: September 6, 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 September 6, 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  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 4  
American Fork, UT 84003

Spaulding Law LLP  
(Registered Agent for DAS Labs LLC, individually  
and dba Bucked Up)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 4  
American Fork, UT 84003

Spaulding Law LLP  
(Registered Agent for Bucked Up, LLC)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 3  
American Fork, UT 84003

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 3  
American Fork, UT 84003

On September 6, 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 September 6, 2019, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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



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

September 6, 2019

Page 6

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, 7<sup>th</sup> 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, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

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

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

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

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

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

September 6, 2019

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

On September 6, 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 September 6, 2019, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, reading "Phyllis Dunwoody". The signature is written in a cursive, flowing style.

---

Phyllis Dunwoody

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

September 6, 2019

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**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 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

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

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

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto: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

October 16, 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:

**DAS Labs LLC, individually and dba Bucked Up  
Bucked Up, LLC**

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

**1. Bucked Up Keto Protein Chocolate - Lead**

2. **BAMF Nootropic Preworkout Strawberry Kiwi - Lead**
3. **Bucked Up Racked Branched Chain Amino Acids Intra-Workout Peach Mango - Lead**
4. **Bucked Up Racked Branched Chain Amino Acids Intra-Workout Piña Colada - Lead**
5. **Woke AF High-Stimulant Pre-Workout 'Merica Rocket Pop - Lead**
6. **BAMF High-Stimulant Nootropic Preworkout Gym N' Juice - Lead**
7. **Bucked Up CL Exclusive All-Natural Pre-Workout Pink Lemonade - Lead**
8. **Bucked Up CL Exclusive All-Natural Pre-Workout Blueberry Pomegranate - Lead**
9. **Bucked UP Stag Multivitamin - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 16, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

October 16, 2019

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

Sincerely,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to DAS Labs LLC, individually and dba Bucked Up, Bucked Up, LLC and their 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 DAS Labs LLC, individually and dba Bucked Up; Bucked Up, 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 chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: October 16, 2019

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Chris Heptinstall



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

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

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

On October 16, 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  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 4  
American Fork, UT 84003

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 3  
American Fork, UT 84003

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 4  
American Fork, UT 84003

Spaulding Law LLP  
(Registered Agent for DAS Labs LLC, individually  
and dba Bucked Up)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
363 West Industrial Dr  
Pleasant Grove, UT 84062

Spaulding Law LLP  
(Registered Agent for Bucked Up, LLC)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
363 West Industrial Dr  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 3  
American Fork, UT 84003

On October 16, 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 October 16, 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.*

October 16, 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 Ankorn, 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, 7<sup>th</sup> 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, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

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

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

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

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

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

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

On October 16, 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 October 16, 2019, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, reading "Phyllis Dunwoody". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

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 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

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

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto: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 C**



## **Environmental Research Center**

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

December 30, 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:

**DAS Labs LLC, individually and dba Bucked Up  
Bucked Up, LLC**

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

**1. Bucked Up Pre-Workout Watermelon - Lead**

2. **Bucked Up Non-Stimulant Pre-Workout Raspberry Lime Ricky - Lead**
3. **Bucked Up CL Exclusive Pre-Workout Sour Watermelon - Lead**
4. **Bucked Up Pre-Workout Strawberry Kiwi - Lead**
5. **Woke AF High-Stimulant Pre-Workout Killa OJ - Lead**
6. **Bucked Up Organic Greens Unflavored - Lead**
7. **Bucked Up Organic Greens Mixed Berry - Lead**
8. **Woke AF High-Stimulant Blood Raz - Lead**
9. **Woke AF High-Stimulant Blue Raz - Lead**
10. **Bucked Up CL Exclusive Nursing Support - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least December 30, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

December 30, 2019

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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 DAS Labs LLC, individually and dba Bucked Up, Bucked Up, LLC and their 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 DAS Labs LLC, individually and dba Bucked Up; Bucked Up, 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 chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: December 30, 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 December 30, 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  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 4  
American Fork, UT 84003

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 3  
American Fork, UT 84003

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 4  
American Fork, UT 84003

Spaulding Law LLP  
(Registered Agent for DAS Labs LLC, individually  
and dba Bucked Up)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
363 West Industrial Dr  
Pleasant Grove, UT 84062

Spaulding Law LLP  
(Registered Agent for Bucked Up, LLC)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
363 West Industrial Dr  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 3  
American Fork, UT 84003

On December 30, 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 December 30, 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.*

December 30, 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  
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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  
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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 Ankorn, 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, 7<sup>th</sup> 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, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

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

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

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

December 30, 2019

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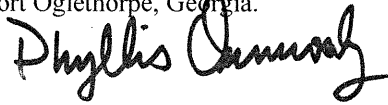
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On December 30, 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 December 30, 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 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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



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

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> 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](mailto: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 D**



## Environmental Research Center

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

January 14, 2020

### 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:

**DAS Labs LLC, individually and dba Bucked Up  
Bucked Up, LLC**

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

**1. Exogenous Ketones Raspberry Lemonade Flavor - Lead**



2. **Bucked Up Non-Stimulant Pre-Workout Grape Gainz - Lead**
3. **Bucked Up Non-Stimulant Pre-Workout Pink Lemonade - Lead**
4. **Exogenous Ketones Orange-Mango Flavor - Lead**
5. **BAMF High-Stimulant Nootropic Preworkout Pump N' Grind - Lead**
6. **Bucked Up Racked Branched Chain Amino Acids Intra-Workout Grape Flavor - Lead**
7. **BAMF High-Stimulant Nootropic Preworkout Blue Raz - Lead**

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 14, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

January 14, 2020

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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 DAS Labs LLC, individually and dba Bucked Up, Bucked Up, LLC and their Registered Agents for Service of Process only)

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

**2CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by DAS Labs LLC, individually and dba Bucked Up; Bucked Up, 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 chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: January 14, 2020

---

Chris Heptinstall

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

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

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

On January 14, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 4  
American Fork, UT 84003

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
313 S 740 E, Ste 3  
American Fork, UT 84003

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 4  
American Fork, UT 84003

Phillip W. Hadfield  
(Registered Agent for DAS Labs LLC, individually  
and dba Bucked Up)  
781 S Auto Mall Drive  
American Fork, UT 84003

Current President or CEO  
DAS Labs LLC, individually and  
dba Bucked Up  
363 West Industrial Dr  
Pleasant Grove, UT 84062

Spaulding Law LLP  
(Registered Agent for Bucked Up, LLC)  
1955 W Grove Parkway Ste 250  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
363 West Industrial Dr  
Pleasant Grove, UT 84062

Current President or CEO  
Bucked Up, LLC  
313 S 740 E, Ste 3  
American Fork, UT 84003

On January 14, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 14, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

January 14, 2020

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

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

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

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

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

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

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Napa, CA 94559  
CEPD@countyofnapa.org

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

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

Mark Ankorn, 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, 7<sup>th</sup> 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, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

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

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

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

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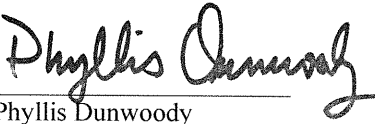
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On January 14, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 14, 2020, in Fort Oglethorpe, Georgia.

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



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

January 14, 2020

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**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 4<sup>th</sup> Floor  
Eureka, CA 95501

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

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

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

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

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

District Attorney, Madera  
County  
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, 2<sup>nd</sup>  
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 2<sup>nd</sup> 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

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

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

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<sup>2</sup> 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](mailto: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.