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individually and dba Dr. Kellyann

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

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

**Plaintiff,**

**vs.**

**THE BEST OF ORGANIC, LLC,  
individually and dba DR. KELLYANN and  
DOES 1-100**

**Defendants.**

**CASE NO. RG20052230**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 28, 2020

Trial Date: None set

**1. INTRODUCTION**

1.1 On January 28, 2020, 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 (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against The Best of Organic, LLC, individually and dba Dr. Kellyann (“Dr.  
2 Kellyann”) and Does 1-100. In this action, ERC alleges that a number of products  
3 manufactured, distributed, or sold by Dr. Kellyann contain lead, a chemical listed under  
4 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical  
5 at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Dr.  
7 Kellyann's Slim Collagen Shake Drink Mix To Go! Chocolate Almond, (2) Dr. Kellyann  
8 Collagen Broth Natural Bone Broth, and (3) Dr. Kellyann Collagen Cocoa Hot Chocolate.

9       **1.2**     ERC and Dr. Kellyann 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 Dr. Kellyann is a  
16 business entity that has employed ten or more persons at all times relevant to this action, and  
17 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Dr.  
18 Kellyann manufactures, distributes, and/or sells the Covered Products.

19       **1.5**     The Complaint is based on allegations contained in ERC’s Notice of Violation  
20 dated September 6, 2019 that was served on the California Attorney General, other public  
21 enforcers, and Dr. Kellyann (“Notice”). A true and correct copy of the 60-Day Notice dated  
22 September 6, 2019 is attached hereto as **Exhibit A** and incorporated herein by reference. More  
23 than 60 days have passed since the Notice was served on the Attorney General, public  
24 enforcers, and Dr. Kellyann and no designated governmental entity has filed a Complaint  
25 against Dr. Kellyann with regard to the Covered Products or the alleged violations.

26       **1.6**     ERC’s Notice and Complaint allege that use of the Covered Products exposes  
27 persons in California to lead without first providing clear and reasonable warnings in violation  
28 of California Health and Safety Code section 25249.6. Dr. Kellyann denies all material

1 allegations contained in the Notice and Complaint.

2       **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
3 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
4 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
5 or be construed as an admission by any of the Parties or by any of their respective officers,  
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
8 issue of law, or violation of law.

9       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
11 any current or future legal proceeding unrelated to these proceedings.

12       **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
13 as a Judgment by this Court.

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

15       For purposes of this Consent Judgment and any further court action that may become  
16 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
17 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
18 over Dr. Kellyann as to the acts alleged in the Complaint, that venue is proper in Alameda  
19 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
20 resolution of all claims up through and including the Effective Date which were or could have  
21 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

23       **3.1**     Beginning on the Effective Date, Dr. Kellyann shall be permanently enjoined  
24 from manufacturing for sale in the State of California, "Distributing into the State of  
25 California," or directly selling in the State of California, any Covered Product which exposes a  
26 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it  
27 meets the warning requirements under Section 3.2.

28       **3.1.1**   As used in this Consent Judgment, the term "Distributing into the State

1 of California” shall mean to directly ship a Covered Product into California for sale in  
2 California or to sell a Covered Product to a distributor that Dr. Kellyann knows or has reason  
3 to know will sell the Covered Product in California.

4 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
6 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
7 product (using the largest serving size appearing on the product label), multiplied by servings  
8 of the product per day (using the largest number of recommended daily servings appearing on  
9 the label), which equals micrograms of lead exposure per day. If the label contains no  
10 recommended daily servings, then the number of recommended daily servings shall be one.

11 **3.2 Clear and Reasonable Warnings**

12 If Dr. Kellyann is required to provide a warning pursuant to Section 3.1, the following  
13 warning must be utilized (“Warning”):

14 **WARNING:** Consuming this product can expose you to chemicals including [lead] which  
15 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).

16 Dr. Kellyann shall use the phrase “cancer and” in the Warning if Dr. Kellyann has reason  
17 to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
18 determined pursuant to the quality control methodology set forth in Section 3.4 or if Dr. Kellyann  
19 has reason to believe that another Proposition 65 chemical is present which may require a cancer  
20 warning.

21 The Warning shall be securely affixed to or printed upon the container or label of each  
22 Covered Product. If the Warning is provided on the label, it must be set off from other  
23 surrounding information and enclosed in a box. In addition, for any Covered Product sold over  
24 the internet, the Warning shall appear on the checkout page when a California delivery address  
25 is indicated for any purchase of any Covered Product. An asterisk or other identifying method  
26 must be utilized to identify which products on the checkout page are subject to the Warning.  
27 In no event shall any internet or website Warning be contained in or made through a link.

28 The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on the website or on the label or container of Dr. Kellyann's product  
2 packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No  
3 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
4 average lay person shall accompany the Warning. Further, no statements may accompany the  
5 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
6 less harmful effect of the listed chemical.

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

### 11 **3.3 Conforming Covered Products**

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

### 15 **3.4 Testing and Quality Control Methodology**

16 **3.4.1** Beginning within one year of the Effective Date, Dr. Kellyann shall  
17 arrange for lead testing of the Covered Products at least once a year for a minimum of three  
18 consecutive years by arranging for testing of five randomly selected samples of each of the  
19 Covered Products, in the form intended for sale to the end-user, which Dr. Kellyann intends to  
20 sell or is manufacturing for sale in California, directly selling to a consumer in California or  
21 "Distributing into the State of California." If tests conducted pursuant to this Section  
22 demonstrate that no Warning is required for a Covered Product during each of three  
23 consecutive years, then the testing requirements of this Section will no longer be required as to  
24 that Covered Product. However, if during or after the three-year testing period, Dr. Kellyann  
25 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the  
26 Covered Products, Dr. Kellyann shall test that Covered Product annually for at least two (2)  
27 consecutive years after such change is made.

28 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the highest

1 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
2 controlling.

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

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

12           **3.4.5** Nothing in this Consent Judgment shall limit Dr. Kellyann's ability to  
13 conduct, or require that others conduct, additional testing of the Covered Products, including  
14 the raw materials used in their manufacture.

15           **3.4.6** Within thirty (30) days of ERC's written request, Dr. Kellyann shall  
16 deliver lab reports obtained pursuant to Section 3.4 to ERC. Dr. Kellyann shall retain all test  
17 results and documentation for a period of five years from the date of each test.

18           **3.5** Nothing in this Section 3 is intended to apply to Dr. Kellyann during any quarter  
19 of a year in which it is not a "person in the course of doing business" as defined in Cal. Health &  
20 Safety Code § 25249.11(b). Dr. Kellyann's status as a "person in the course of doing business"  
21 shall be determined by the number of its Employees, as defined in 27 California Code of  
22 Regulations § 25102(h). Upon ERC's written request, Dr. Kellyann shall provide to ERC (1) a  
23 Declaration stating the number of its employees and (2) copies of its IRS Form 941 Reports, for  
24 each quarter during the one year prior to ERC's request to document its status as a "person in the  
25 course of doing business." ERC shall be entitled to request such information for a period of  
26 three years after the Effective Date and shall not request such information more than twice per  
27 calendar year.

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1     **4. SETTLEMENT PAYMENT**

2             **4.1**     In full satisfaction of all potential civil penalties, additional settlement  
3 payments, attorney's fees, and costs, Dr. Kellyann shall make a total payment of \$45,000.00  
4 ("Total Settlement Amount") to ERC in three (3) periodic payments (the "Periodic Payments")  
5 according to the following payment schedule ("Due Dates"):

- 6             • Payment 1 - \$15,000.00 within five (5) days of the Effective Date  
7             • Payment 2 - \$15,000.00 within thirty-five (35) days of the Effective Date  
8             • Payment 3 - \$15,000.00 within sixty-five (65) days of the Effective Date

9             Dr. Kellyann shall make the Periodic Payments by wire transfer to ERC's account, for  
10 which ERC will give Dr. Kellyann the necessary account information. The Total Settlement  
11 Amount shall be apportioned as follows:

12            **4.2**     \$22,000.00 shall be considered a civil penalty pursuant to California Health and  
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$16,500.00) of the civil penalty to  
14 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,500.00) of the civil penalty.

17            **4.3**     \$2,407.33 shall be distributed to ERC as reimbursement to ERC for reasonable  
18 costs incurred in bringing this action.

19            **4.4**     \$15,052.84 shall be distributed to ERC as an Additional Settlement Payment  
20 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
21 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
22 allegedly caused by Defendant in this matter. These activities are detailed  
23 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic  
24 chemicals in dietary supplement products in California. ERC's activities have had, and will  
25 continue to have, a direct and primary effect within the State of California because California  
26 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary  
27 supplements and/or by providing clear and reasonable warnings to California consumers prior  
28 to ingestion of the products.

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

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

**4.5** \$5,539.83 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

**4.6** In the event that Dr. Kellyann fails to remit any of the Periodic Payments owed



1 under Section 4.1 of this Consent Judgment on or before the applicable Due Date, Dr. Kellyann  
2 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC  
3 shall provide written notice of the delinquency to Dr. Kellyann via electronic mail. If Dr.  
4 Kellyann fails to deliver the delinquent payment within five (5) days from the written notice,  
5 the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall  
6 be immediately due and owing and shall accrue interest at the statutory judgment interest rate  
7 provided in the California Code of Civil Procedure section 685.010. Additionally, Dr. Kellyann  
8 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment  
9 due under this Consent Judgment.

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

11 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
12 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
13 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
14 modified consent judgment.

15 **5.2** If Dr. Kellyann seeks to modify this Consent Judgment under Section 5.1, then  
16 Dr. Kellyann must provide written notice to ERC of its intent ("Notice of Intent"). If ERC  
17 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
18 must provide written notice to Dr. Kellyann within thirty (30) days of receiving the Notice of  
19 Intent. If ERC notifies Dr. Kellyann in a timely manner of ERC's intent to meet and confer,  
20 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
21 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent  
22 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
23 modification, ERC shall provide to Dr. Kellyann a written basis for its position. The Parties  
24 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
25 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
26 deadlines for the meet-and-confer period.

27 **5.3** In the event that Dr. Kellyann initiates or otherwise requests a modification  
28 under Section 5.1, and the meet and confer process leads to a joint motion or application for a

1 modification of the Consent Judgment, Dr. Kellyann shall reimburse ERC its costs and  
2 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
3 arguing the motion or application.

4 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
5 application in support of a modification of the Consent Judgment, then either Party may seek  
6 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
7 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
8 section 1021.5.

9 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
10 **JUDGMENT**

11 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
12 terminate this Consent Judgment.

13 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
14 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
15 inform Dr. Kellyann in a reasonably prompt manner of its test results, including information  
16 sufficient to permit Dr. Kellyann to identify the Covered Products at issue. Dr. Kellyann shall,  
17 within thirty (30) days following such notice, provide ERC with testing information, from an  
18 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
19 demonstrating Dr. Kellyann's compliance with the Consent Judgment. The Parties shall first  
20 attempt to resolve the matter prior to ERC taking any further legal action.

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

2           **8.1**       This Consent Judgment is a full, final, and binding resolution between ERC,  
3 on behalf of itself and in the public interest, and Dr. Kellyann and its respective officers,  
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
5 franchisees, licensees, customers (not including private label customers of Dr. Kellyann),  
6 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
7 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
8 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
9 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
10 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
11 asserted, or that could have been asserted from the handling, use, or consumption of the  
12 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
13 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
14 lead up to and including the Effective Date.

15           **8.2**       ERC on its own behalf only, and Dr. Kellyann on its own behalf only,  
16 further waive and release any and all claims they may have against each other for all actions or  
17 statements made or undertaken in the course of seeking or opposing enforcement of  
18 Proposition 65 in connection with the Notice and Complaint up through and including the  
19 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
20 right to seek to enforce the terms of this Consent Judgment.

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

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

5 ERC on behalf of itself only, and Dr. Kellyann on behalf of itself only, acknowledge and  
6 understand the significance and consequences of this specific waiver of California Civil Code  
7 section 1542.

8 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
9 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
10 in the Covered Products as set forth in the Notice and Complaint.

11 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
12 environmental exposures arising under Proposition 65, nor shall it apply to any of Dr.  
13 Kellyann's products other than the Covered Products.

14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

26 Chris Heptinstall, Executive Director, Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
28 Ph: (619) 500-3090  
Email: chris.heptinstall@erc501c3.org

1 With a copy to:  
2 Charles W. Poss  
3 Environmental Research Center, Inc.  
4 3111 Camino Del Rio North, Suite 400  
5 San Diego, CA 92108  
6 Ph: (619) 500-3090  
7 Fax: (706) 858-0326  
8 Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

9 **FOR THE BEST OF ORGANIC, LLC, individually and dba DR. KELLYANN:**

10 David Urman  
11 Best of Organic, LLC  
12 219 Elm Street  
13 Birmingham, MI 48009  
14 Email: [david@drkellyann.com](mailto:david@drkellyann.com)

15 With a copy to:  
16 Michael J. Gleason  
17 Hahn Loeser & Parks LLP  
18 One American Plaza  
19 600 West Broadway, Suite 1500  
20 San Diego, CA 92101  
21 Ph: (619) 810-4310  
22 Email: [mgleason@hahnlaw.com](mailto:mgleason@hahnlaw.com)

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
prior to the hearing on the motion.

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

**13. EXECUTION AND COUNTERPARTS**

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

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

#### 3 **14. DRAFTING**

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

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

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

#### 17 **16. ENFORCEMENT**

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

#### 26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

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

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

17 **IT IS SO STIPULATED:**

18 Dated: 2/14, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

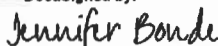
By: 

Chris Heptinstall, Executive Director

22 Dated: February 21, 2020

THE BEST OF ORGANIC, LLC,  
individually and dba DR. KELL YANN

DocuSigned by:



E426D430BA904F6

By: Jennifer Bonde

Its: CEO

By:

By:

Case No. RG20052230



**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 Violator and the Appropriate Public Enforcement Agencies:

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

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

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

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

**The Best of Organic, LLC, individually and dba Dr. Kellyann**

**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. Dr. Kellyann's Slim Collagen Shake Drink Mix To Go! Chocolate Almond - Lead**
- 2. Dr. Kellyann Collagen Broth Natural Bone Broth - Lead**
- 3. Dr. Kellyann Collagen Cocoa Hot Chocolate - Lead**

September 6, 2019

Page 2

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

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 Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

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

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

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to The Best of Organic, LLC, individually and dba Dr. Kellyann and its Registered Agent for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by The Best of Organic, LLC, individually and dba Dr. Kellyann**

I, Chris Heptinstall, declare:

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

2. I am the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

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

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



Dated: 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  
The Best of Organic, LLC, individually  
and dba Dr. Kellyann  
219 Elm St.  
Birmingham, MI 48009

Jennifer Bonde  
(Registered Agent for The Best of Organic, LLC,  
individually and dba Dr. Kellyann)  
219 Elm St.  
Birmingham, MI 48009

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

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

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

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

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

September 6, 2019

Page 5

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

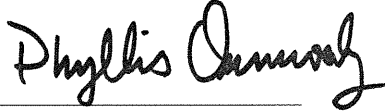
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
September 6, 2019  
Page 6

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 style with a large, looped "P" and a long, sweeping "y".

---

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

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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.