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15 Mindful Nourishment, LLC,

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

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

21 **Plaintiff,**

22 **vs.**

23 **NORTHWEST NUTRITIONAL FOODS,**  
24 **LLC, individually and dba ZING BARS;**  
25 **MINDFUL NOURISHMENT, LLC,**  
26 **individually and dba ZING BARS; and**  
27 **DOES 1-100**

28 **Defendants.**

**CASE NO. RG21090717**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 4, 2021  
Trial Date: None set

**1. INTRODUCTION**

**1.1** On March 4, 2021, 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

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
2 against Northwest Nutritional Foods, LLC (“NNF”) and Mindful Nourishment, LLC,  
3 (“Mindful Nourishment” or “Defendant”) and Does 1-100. Subsequently, on August 2, 2021, a  
4 First Amended Complaint was filed (hereinafter referred to as the operative “Complaint”). In  
5 this action, ERC alleges that a number of products manufactured, distributed, or sold by  
6 Defendants NNF and Mindful Nourishment contain lead and/or cadmium, chemicals listed  
7 under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these  
8 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
9 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Zing Bar  
10 Peanut Butter Chocolate Chip (lead), (2) Zing Bar Dark Chocolate Mint (lead, cadmium), (3)  
11 Zing Bar Dark Chocolate Coconut (lead), (4) Zing Bar Dark Chocolate Mocha (lead), (5) Zing  
12 Dark Chocolate Hazelnut Vitality Bar (lead), (6) Zing Coconut Cashew Crisp Vitality Bar  
13 (lead), (7) Zing Oatmeal Chocolate Chip Vitality Bar (lead), (8) Zing Dark Chocolate Cherry  
14 Almond Vitality Bar (lead), (9) Zing Double Nut Brownie Vitality Bar (lead), (10) Zing Bar  
15 Keto Peanut Butter Cookie Dough (lead), (11) Zing Bar Keto Chocolate Almond Cacao  
16 Crunch, and (12) Zing Bar Keto Macadamia Snickerdoodle (lead).

17 **1.2** ERC and Defendants are hereinafter referred to individually as a “Party” or  
18 collectively as the “Parties.”

19 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
20 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
21 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
22 and encouraging corporate responsibility.

23 **1.4** For purposes of this Consent Judgment, the Parties stipulate that Mindful  
24 Nourishment manufactures, distributes, and/or sells the Covered Products. Defendant Mindful  
25 Nourishment represents that NNF does not manufacture, distribute or sell the Covered Products.  
26 Mindful Nourishment will take responsibility for and be obligated for all payments or actions  
27 required of either NNF or Mindful Nourishment, or both, pursuant to this Consent Judgment and  
28 will not at any time attempt to shift the performance of any responsibility or obligation it may

1 have under this Consent Judgment to NNF.

2           **1.5**     The Complaint is based on allegations contained in ERC’s Notices of Violation  
3 dated October 22, 2020, December 22, 2020, and March 11, 2021 that were served on the  
4 California Attorney General, other public enforcers, and Defendants NNF and Mindful  
5 Nourishment (“Notices”). True and correct copies of the 60-Day Notices dated October 22,  
6 2020, December 22, 2020, and March 11, 2021 are attached hereto as **Exhibits A, B, and C**  
7 and each is incorporated herein by reference. More than 60 days have passed since the Notices  
8 were served on the Attorney General, public enforcers, and Defendants and no designated  
9 governmental entity has filed a Complaint against Defendants with regard to the Covered  
10 Products or the alleged violations.

11           **1.6**     ERC’s Notices and Complaint allege that use of the Covered Products by  
12 California consumers exposes them to lead and/or cadmium without first receiving clear and  
13 reasonable warnings from Mindful Nourishment, which is in violation of California Health and  
14 Safety Code section 25249.6. Defendants deny all material allegations contained in the Notices  
15 and Complaint.

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

23           **1.8**     Defendants NNF and Mindful Nourishment deny the material allegations  
24 contained in ERC’s Notices and Complaint and maintain that they have not violated  
25 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by  
26 Defendants NNF and Mindful Nourishment of any fact, finding, issue of law, or violation of  
27 law; nor shall compliance with this Consent Judgment constitute or be construed as an  
28 admission by Defendants NNF and Mindful Nourishment of any fact, finding, conclusion,

1 issue of law, or violation of law, such being specifically denied by Defendants. However, this  
2 section shall not diminish or otherwise affect the obligations, responsibilities, and duties of  
3 Defendants under this Consent Judgment.

4 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall  
5 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
6 any current or future legal proceeding unrelated to these proceedings.

7 **1.10** The Effective Date of this Consent Judgment is the date on which Notice is  
8 served that this Consent Judgment is entered as a Judgment by this Court.

9 **2. JURISDICTION AND VENUE**

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

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

18 **3.1** Beginning on the Effective Date, Mindful Nourishment shall be permanently  
19 enjoined from manufacturing for sale in the State of California, “Distributing into the State of  
20 California,” or directly selling in the State of California, any Covered Product that exposes a  
21 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or  
22 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it  
23 meets the warning requirements under Section 3.2.

24 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
25 of California” shall mean to directly ship a Covered Product into California for sale in  
26 California or to sell a Covered Product to a distributor that Mindful Nourishment knows or has  
27 reason to know will sell the Covered Product in California.

28 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure

1 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
2 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
3 product (using the largest serving size appearing on the product label), multiplied by servings  
4 of the product per day (using the largest number of recommended daily servings appearing on  
5 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section  
6 3.1.4, the amount of lead in the ingredients listed in **Table 1** below, if applicable. If the label  
7 contains no recommended daily servings, then the number used for daily servings shall be one  
8 bar.

9 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure  
10 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
11 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
12 the product (using the largest serving size appearing on the product label), multiplied by  
13 servings of the product per day (using the largest number of recommended daily servings  
14 appearing on the label or one serving per day if no recommended daily serving appears on the  
15 label), which equals micrograms of cadmium exposure per day. If the label contains no  
16 recommended daily servings, then the number used for daily servings shall be one bar.

17 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product,  
18 Mindful Nourishment shall be allowed to deduct the amount of lead which is deemed “naturally  
19 occurring” in the ingredients listed in **Table 1** that are contained in that Covered Product under  
20 the following conditions: For each year that Mindful Nourishment claims entitlement to a  
21 “naturally occurring” allowance for lead, Mindful Nourishment shall provide ERC with the  
22 following information: (a) Mindful Nourishment must produce to ERC a written list of each  
23 ingredient in the Covered Product, and the amount, measured in grams, of each such ingredient  
24 contained therein, for which a “naturally occurring” allowance is claimed; (b) Mindful  
25 Nourishment must provide ERC with documentation of laboratory testing, conducted during the  
26 year for which the “naturally occurring” allowance is claimed, that complies with Sections 3.4.3  
27 and 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in **Table**  
28 **1** that is contained in the Covered Product and for which Mindful Nourishment intends to deduct

1 “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any of the  
 2 ingredients listed in **Table 1** that are contained in the Covered Product, Mindful Nourishment  
 3 shall be entitled to deduct the amount of lead contained in each ingredient, up to the full amount  
 4 of the allowance for each ingredient as shown in **Table 1**, for those ingredients that are in the  
 5 Covered Product; and (d) If the Covered Product does not contain any of the ingredients listed in  
 6 **Table 1**, Mindful Nourishment shall not be entitled to a deduction for “naturally occurring” lead  
 7 in the Covered Product for those ingredients. The information required by Sections 3.1.4(a) and  
 8 (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof,  
 9 for any year over the next three (3) years that Mindful Nourishment shall claim entitlement to the  
 10 “naturally occurring” allowance:

11 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa Powder <sup>1</sup>	Up to 1.0 microgram/gram
Chocolate Liquor	Up to 1.0 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram

25 **3.2 Clear and Reasonable Warnings**

26 If Mindful Nourishment is required to provide a warning pursuant to Section 3.1, one of  
 27 \_\_\_\_\_

28 <sup>1</sup> To the extent that Cocoa Nibs are merely the unground equivalent to Cocoa Powder, the same allowance for Cocoa Powder shall be allowed for Cocoa Nibs.


1 the following warnings must be utilized (“Warning”):

2 **OPTION 1:**

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

6 Or:

7 **OPTION 2:**

8  
9 ** WARNING:** [Cancer and ]Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

10 Mindful Nourishment shall use the phrase “cancer and” in the Warning if Mindful  
11 Nourishment has reason to believe that the “Daily Lead Exposure Level” is greater than 15  
12 micrograms of lead as determined pursuant to the quality control methodology set forth in  
13 Section 3.4 or if Mindful Nourishment has reason to believe that another Proposition 65 chemical  
14 is present which may require a cancer warning. As identified in the brackets, the warning shall  
15 appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the  
16 Covered Products. For the Option 2 Warning, a symbol consisting of a black exclamation point  
17 in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of  
18 the Warning, in a size no smaller than the height of the word “**WARNING.**”

19 The Warning shall be securely affixed to or printed upon the label of each Covered  
20 Product and it must be set off from other surrounding information and enclosed in a box. In  
21 addition, for any Covered Product sold over the internet by Mindful Nourishment, the Warning  
22 shall appear on the checkout page when a California delivery address is indicated for any  
23 purchase of any Covered Product. An asterisk or other identifying method must be utilized to  
24 identify which products on the checkout page are subject to the Warning.

25 The Warning shall be at least the same size as the largest of any other health or safety  
26 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
27 capital letters and in bold print. No statements intended to or likely to have the effect of  
28 diminishing the impact of the Warning on the average lay person shall accompany the Warning.

1 Further no statements may accompany the Warning that state or imply that the source of the listed  
2 chemical has an impact on or results in a less harmful effect of the listed chemical.

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

7 For purposes of this Consent Judgment, the term “label” means a display of written,  
8 printed or graphic material that is printed on or affixed to a Covered Product or its immediate  
9 container or wrapper.

### 10 **3.3 Conforming Covered Products**

11 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
12 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure  
13 Level” is no more than 4.1 micrograms of cadmium per day as determined by the exposure  
14 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
15 3.4, and that is not known by Mindful Nourishment to contain other chemicals that violate  
16 Proposition 65’s safe harbor thresholds.

### 17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** Beginning within one year of the Effective Date, Mindful Nourishment  
19 shall arrange for lead and cadmium testing, as relevant, of the Covered Products at least once a  
20 year for a minimum of three (3) consecutive years by arranging for testing of five (5) randomly  
21 selected samples of each of the Covered Products, in the form intended for sale to the end-user,  
22 which Mindful Nourishment intends to sell or is manufacturing for sale in California, directly  
23 selling to a consumer in California or “Distributing into the State of California.” If tests  
24 conducted pursuant to this Section demonstrate that no Warning is required for a Covered  
25 Product during each of three consecutive years, then the testing requirements of this Section  
26 will no longer be required as to that Covered Product. However, if during or after the three-  
27 year testing period, Mindful Nourishment reformulates any of the Covered Products, Mindful  
28 Nourishment shall test that Covered Product annually for at least two (2) consecutive years



1 after such change is made.

2           **3.4.2** For purposes of measuring and determining compliance with the “Daily  
3 Lead Exposure Level” and/or “Daily Cadmium Exposure Level,” the average lead and/or  
4 cadmium detection result of the five (5) randomly selected samples of the specific Covered  
5 Product will be controlling, so long as any single test result of one of the five randomly  
6 selected samples does not result in a “Daily Lead Exposure Level” that exceeds 0.75  
7 micrograms of lead and/or a “Daily Cadmium Exposure Level” that exceeds 5.1 micrograms of  
8 cadmium. In the event that one of the tests of the five (5) randomly selected samples of a  
9 Covered Product results in a “Daily Lead Exposure Level” that exceeds 0.75 micrograms of  
10 lead and/or a “Daily Cadmium Exposure Level” that exceeds 5.1 micrograms of cadmium,  
11 then the highest lead and/or cadmium detection result for that Covered Product will be  
12 controlling.

13           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
14 laboratory method that complies with the performance and quality control factors appropriate  
15 for the method used, including limit of detection and limit of quantification, sensitivity,  
16 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
17 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
18 mg/kg.

19           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
20 independent third party laboratory certified by the California Environmental Laboratory  
21 Accreditation Program or an independent third-party laboratory that is registered with the  
22 United States Food & Drug Administration.

23           **3.4.5** Nothing in this Consent Judgment shall limit Mindful Nourishment’s  
24 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
25 including the raw materials used in their manufacture.

26           **3.4.6** Within thirty (30) days of ERC’s written request, Mindful Nourishment  
27 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Mindful Nourishment shall  
28 retain all test results and documentation for a period of five years from the date of each test.

1           **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to  
2 any Covered Product for which Mindful Nourishment is providing a Warning pursuant to  
3 Section 3.2 of this Consent Judgment. In the event a Warning is provided after the Effective  
4 Date but Mindful Nourishment thereafter ceases to provide the Warning, the testing and  
5 reporting requirements of Section 3.4 of this Consent Judgment shall apply beginning within  
6 one year after the date the Warning ceases to be provided, unless Mindful Nourishment can  
7 show to the satisfaction of ERC that the cessation in providing the Warning was a temporary  
8 error that was resolved when discovered.

9           **4. SETTLEMENT PAYMENT**

10           **4.1** In full satisfaction of all potential civil penalties, additional settlement  
11 payments, attorney’s fees, and costs, Mindful Nourishment shall make a total payment of  
12 \$145,000.00 (“Total Settlement Amount”) to ERC within 10 business days of receiving Notice  
13 that this Consent Judgment was entered by the Court (“Due Date”). Mindful Nourishment  
14 shall make this payment by wire transfer to ERC’s account, for which ERC will give Mindful  
15 Nourishment the necessary account information. The Total Settlement Amount shall be  
16 apportioned as follows:

17           **4.2** \$66,125.00 shall be considered a civil penalty pursuant to California Health and  
18 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$49,593.75) of the civil penalty to  
19 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
20 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
21 Code section 25249.12(c). ERC will retain the remaining 25% (\$16,531.25) of the civil  
22 penalty.

23           **4.3** \$6,870.05 shall be distributed to ERC as reimbursement to ERC for reasonable  
24 costs incurred in bringing this action.

25           **4.4** \$49,398.67 shall be distributed to ERC as an Additional Settlement Payment  
26 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
27 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
28 allegedly caused by Defendant in this matter. These activities are detailed below and support

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

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

27         ERC shall be fully accountable in that it will maintain adequate records to document  
28 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds

1 are being spent only for the proper, designated purposes described in this Consent Judgment.  
2 ERC shall provide the Attorney General, within thirty days of any request, copies of  
3 documentation demonstrating how such funds have been spent.

4 **4.5** \$22,606.28 shall be distributed to ERC for its in-house legal fees. Except as  
5 explicitly provided herein, each Party shall bear its own fees and costs.

6 **4.6** In the event that Mindful Nourishment fails to remit the Total Settlement  
7 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, Mindful  
8 Nourishment shall be deemed to be in material breach of its obligations under this Consent  
9 Judgment. ERC shall provide written notice of the delinquency to Mindful Nourishment via  
10 electronic mail. If Mindful Nourishment fails to deliver the Total Settlement Amount within  
11 five (5) business days from delivery of this written notice, the Total Settlement Amount shall  
12 accrue interest at the statutory judgment interest rate provided in the California Code of Civil  
13 Procedure section 685.010. Additionally, Mindful Nourishment agrees to pay ERC's  
14 reasonable attorney's fees and costs for any efforts to collect the payment due under this  
15 Consent Judgment beyond the initial written notice.

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

17 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
18 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
19 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
20 modified consent judgment.

21 **5.2** If a Party seeks to modify this Consent Judgment under Section 5.1, then that  
22 Party must provide written notice to all other Parties of its intent ("Notice of Intent"). If any  
23 non-moving Party seeks to meet and confer regarding the proposed modification in the Notice  
24 of Intent, then the non-moving Party must provide written notice to all Parties within thirty  
25 (30) days of receiving the Notice of Intent. If the non-moving Party notifies the moving Party  
26 in a timely manner of its intent to meet and confer, then the Parties shall meet and confer in  
27 good faith as required in this Section. The Parties shall meet in person or via telephone within  
28 thirty (30) days of the non-moving Party's notification of its intent to meet and confer. Within

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

6 **5.3** In the event that any Party initiates or otherwise requests a modification under  
7 Section 5.1 for reasons other than the revoking of Proposition 65 in total or revoking the  
8 application of Proposition 65 to lead in the Covered Products, and the meet and confer process  
9 leads to a joint motion or application for a modification of the Consent Judgment, the Party  
10 that initiated or requested modification shall reimburse all other Parties their costs and  
11 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
12 arguing the motion or application.

13 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
14 **JUDGMENT**

15 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
16 terminate this Consent Judgment. This Consent Judgment is enforceable solely by the Parties  
17 hereto and through the processes set out herein and any alleged breach of the terms of this  
18 Consent Judgment must be brought in this Court.

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

28 ///

1       **7. APPLICATION OF CONSENT JUDGMENT**

2           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
4 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application  
6 to any Covered Product that is distributed or sold exclusively outside the State of California and  
7 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 Mindful Nourishment and its respective  
11 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
12 suppliers, franchisees, licensees, customers (not including private label customers of Mindful  
13 Nourishment), distributors, wholesalers, retailers, attorneys 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, including but not limited to NNF (collectively,  
16 “Released Parties).

17           **8.2**       ERC, acting in the public interest, releases the Released Parties from any  
18 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
19 to lead and/or cadmium from the Covered Products as set forth in the Notices of Violation.  
20 ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from  
21 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,  
22 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or  
23 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its  
24 implementing regulations arising from the failure to provide Proposition 65 warnings on the  
25 Covered Products regarding lead and/or cadmium up to and including the Effective Date.

26           **8.3**       ERC on its own behalf only, and Mindful Nourishment on its own behalf  
27 only, further waive and release any and all claims they may have against each other for all  
28 actions or statements made or undertaken in the course of seeking or opposing enforcement of

1 Proposition 65 in connection with the Notices and Complaint up through and including the  
2 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
3 right to seek to enforce the terms of this Consent Judgment.

4 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
5 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
6 discovered. ERC on behalf of itself only, and Mindful Nourishment on behalf of itself only,  
7 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
8 claims up through and including the Effective Date, including all rights of action therefore.  
9 ERC and Mindful Nourishment acknowledge that the claims released in Sections 8.2 and 8.3  
10 above may include unknown claims, and nevertheless are aware of and waive California Civil  
11 Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as  
12 follows:

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

17 ERC on behalf of itself only, and Mindful Nourishment on behalf of itself only, acknowledge  
18 and understand the significance and consequences of this specific waiver of California Civil  
19 Code section 1542.

20 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
21 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
22 exposures to lead and/or cadmium in the Covered Products as set forth in the Notices and  
23 Complaint.

24 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
25 environmental exposures arising under Proposition 65, nor shall it apply to any of Mindful  
26 Nourishment's products other than the Covered Products.

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 In the event that any of the provisions of this Consent Judgment are held by a court to be

1 unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
2 affected.

3 **10. GOVERNING LAW**

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

6 **11. PROVISION OF NOTICE**

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

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

11 Chris Heptinstall, Executive Director, Environmental Research Center  
12 3111 Camino Del Rio North, Suite 400  
13 San Diego, CA 92108  
14 Ph: (619) 500-3090  
15 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

16 With a copy to:  
17 Charles W. Poss  
18 Environmental Research Center, Inc.  
19 3111 Camino Del Rio North, Suite 400  
20 San Diego, CA 92108  
21 Ph: (619) 500-3090  
22 Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

23 **MINDFUL NOURISHMENT, LLC**

24 David Ingalls  
25 Mindful Nourishment, LLC  
26 600 1<sup>st</sup> St., First Floor  
27 Seattle, WA 98104  
28 Email: [david@zingbars.com](mailto:david@zingbars.com)

With a copy to:  
Lauren Michals  
Nixon Peabody LLP  
One Embarcadero Center, 32<sup>nd</sup> Floor  
San Francisco, CA 94111  
Ph: (415) 984-8200  
Email: [lmichals@nixonpeabody.com](mailto:lmichals@nixonpeabody.com)



1     **12. COURT APPROVAL**

2             **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
3 Motion for Court Approval and provide all notices and notifications required under Proposition  
4 65 and its regulations. The Parties shall use their best efforts to support entry of this Consent  
5 Judgment.

6             **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
7 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
8 prior to the hearing on the motion.

9             **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
10 void and have no force or effect.

11     **13. EXECUTION AND COUNTERPARTS**

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

15     **14. DRAFTING**

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

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

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

1     **16. ENFORCEMENT**

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

6     **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

13            **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
14 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

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

25 ///

26 ///

27 ///

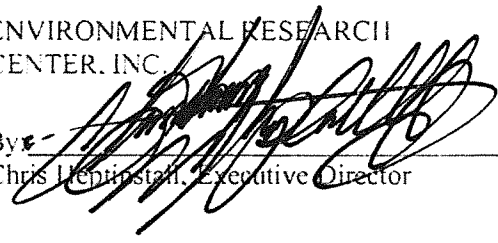
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**IT IS SO STIPULATED:**

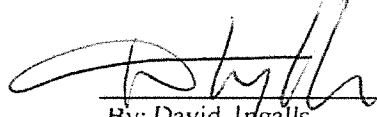
Dated: 1/21/, 2022

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Weinstein, Executive Director

Dated: January 19, 2022


MINDFUL NOURISHMENT, LLC

  
By: David Ingalls  
Its: CEO

**APPROVED AS TO FORM:**


Dated: January 21, 2022

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Charles W. Poss  
In-House Counsel

Dated: January 13, 2022

NIXON PEABODY LLP

By:   
Lauren Michals  
Attorney for Defendants Northwest  
Nutritional Foods, LLC and Mindful  
Nourishment, 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: \_\_\_\_\_, 2022

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

# **EXHIBIT A**



## **Environmental Research Center**

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

October 22, 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:

**Northwest Nutritional Foods, LLC individually and dba Zing Bars  
Mindful Nourishment, LLC, individually and dba Zing Bars**

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

- 1. Zing Bar Peanut Butter Chocolate Chip - Lead**
- 2. Zing Bar Dark Chocolate Mint - Lead, Cadmium**

**3. Zing Bar Dark Chocolate Coconut - Lead**

**4. Zing Bar Dark Chocolate Mocha – Lead**

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

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

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

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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 22, 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 these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

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

October 22, 2020

Page 3

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 Northwest Nutritional Foods, LLC individually and dba Zing Bars; Mindful Nourishment, LLC, individually and dba Zing Bars; 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 Northwest Nutritional Foods, LLC individually and dba Zing Bars and Mindful Nourishment, LLC, individually and dba Zing Bars**

I, Chris Heptinstall, declare:

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

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

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

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

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



Dated: October 22, 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 October 22, 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  
Northwest Nutritional Foods, LLC individually  
and dba Zing Bars  
600 1<sup>st</sup> Ave, Ste 200D  
Seattle, WA 98104

David Ingalls  
(Registered Agent for Northwest Nutritional  
Foods, LLC individually and dba Zing Bars)  
600 1<sup>st</sup> Ave, Ste 200D  
Seattle, WA 98104

Current President or CEO  
Mindful Nourishment, LLC individually  
and dba Zing Bars  
600 1<sup>st</sup> Ave, Ste 200D  
Seattle, WA 98104

Capitol Corporate Services, Inc.  
(Registered Agent for Northwest Nutritional  
Foods, LLC individually and dba Zing Bars)  
36 S 18<sup>th</sup> Ave, Ste D  
Brighton, CO 80601

Current President or CEO  
Mindful Nourishment, LLC individually  
and dba Zing Bars  
719 2<sup>nd</sup> Ave, Ste 1150  
Seattle, WA 98104

Corporation Service Company  
(Registered Agent for Mindful  
Nourishment, LLC individually and dba  
Zing Bars)  
300 Deschutes Way SW, Ste 208  
MC-CSC1  
Tumwater, WA 98501

Corporation Service Company  
(Registered Agent for Mindful  
Nourishment, LLC individually and dba  
Zing Bars)  
251 Little Falls Drive  
Wilmington, DE 19808

On October 22, 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

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

October 22, 2020

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On October 22, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

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

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

Alethea Sargent, Assistant District Attorney  
White Collar Division  
San Francisco District Attorney's Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
alethea.sargent@sfgov.org

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

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

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

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

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

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

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

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

October 22, 2020

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

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

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

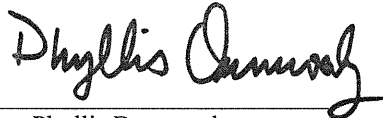
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On October 22, 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 October 22, 2020, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

**Service List**

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

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

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

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

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

District Attorney, El Dorado  
County  
778 Pacific St.  
Placerville, CA 95667

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

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 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 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 B**



## Environmental Research Center

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

December 22, 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:

**Northwest Nutritional Foods, LLC individually and dba Zing Bars  
Mindful Nourishment, LLC, individually and dba Zing Bars**

**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. Zing Dark Chocolate Hazelnut Vitality Bar - Lead**
- 2. Zing Coconut Cashew Crisp Vitality Bar - Lead**

3. **Zing Oatmeal Chocolate Chip Vitality Bar - Lead**
4. **Zing Dark Chocolate Cherry Almond Vitality Bar - Lead**
5. **Zing Double Nut Brownie Vitality Bar - 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 22, 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.

December 22, 2020

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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 Northwest Nutritional Foods, LLC individually and dba Zing Bars; Mindful Nourishment, LLC, individually and dba Zing Bars; 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 Northwest Nutritional Foods, LLC individually and dba Zing Bars and Mindful Nourishment, LLC, individually and dba Zing Bars**

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 22, 2020

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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 December 22, 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  
Northwest Nutritional Foods, LLC individually  
and dba Zing Bars  
600 1<sup>st</sup> Ave, Ste 200D  
Seattle, WA 98104

David Ingalls  
(Registered Agent for Northwest Nutritional  
Foods, LLC individually and dba Zing Bars)  
600 1<sup>st</sup> Ave, Ste 200D  
Seattle, WA 98104

Current President or CEO  
Mindful Nourishment, LLC individually  
and dba Zing Bars  
600 1<sup>st</sup> Ave, Ste 200D  
Seattle, WA 98104

Capitol Corporate Services, Inc.  
(Registered Agent for Northwest Nutritional  
Foods, LLC individually and dba Zing Bars)  
36 S 18<sup>th</sup> Ave, Ste D  
Brighton, CO 80601

Current President or CEO  
Mindful Nourishment, LLC individually  
and dba Zing Bars  
719 2<sup>nd</sup> Ave, Ste 1150  
Seattle, WA 98104

Corporation Service Company  
(Registered Agent for Mindful  
Nourishment, LLC individually and dba  
Zing Bars)  
300 Deschutes Way SW, Ste 208  
MC-CSC1  
Tumwater, WA 98501

Corporation Service Company  
(Registered Agent for Mindful  
Nourishment, LLC individually and dba  
Zing Bars)  
251 Little Falls Drive  
Wilmington, DE 19808

On December 22, 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



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

December 22, 2020

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On December 22, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

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

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

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

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

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

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

Alethea Sargent, Assistant District Attorney  
White Collar Division  
San Francisco District Attorney's Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
alethea.sargent@sfgov.org

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

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

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

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

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

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

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

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

December 22, 2020

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

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

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

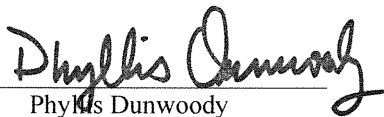
Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

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

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

On December 22, 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 December 22, 2020, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

**Service List**

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

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

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

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

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

District Attorney, El Dorado  
County  
778 Pacific St.  
Placerville, CA 95667

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

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 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 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

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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

March 11, 2021

### 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:

**Northwest Nutritional Foods, LLC individually and dba Zing Bars  
Mindful Nourishment, LLC, individually and dba Zing Bars**

**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. Zing Bar Keto Peanut Butter Cookie Dough - Lead**
- 2. Zing Bar Keto Chocolate Almond Cacao Crunch - Lead**
- 3. Zing Bar Keto Macadamia Snickerdoodle - 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 March 11, 2018, 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 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,



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Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Northwest Nutritional Foods, LLC individually and dba Zing Bars and Mindful Nourishment, LLC, individually and dba Zing Bars 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 Northwest Nutritional Foods, LLC individually and dba Zing Bars and Mindful Nourishment, LLC, individually and dba Zing Bars**

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: March 11, 2021

---

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 March 11, 2021, 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  
Northwest Nutritional Foods, LLC individually  
and dba Zing Bars  
600 1st Ave, Ste 200D  
Seattle, WA 98104

David Ingalls  
(Registered Agent for Northwest Nutritional  
Foods, LLC individually and dba Zing Bars)  
600 1st Ave, Ste 200D  
Seattle, WA 98104

Current President or CEO  
Mindful Nourishment, LLC individually  
and dba Zing Bars  
600 1st Ave, Ste 200D  
Seattle, WA 98104

Capitol Corporate Services, Inc.  
(Registered Agent for Northwest Nutritional  
Foods, LLC individually and dba Zing Bars)  
36 S 18th Ave, Ste D  
Brighton, CO 80601

Current President or CEO  
Mindful Nourishment, LLC individually  
and dba Zing Bars  
719 2nd Ave, Ste 1150  
Seattle, WA 98104

Corporation Service Company  
(Registered Agent for Mindful  
Nourishment, LLC individually and dba  
Zing Bars)  
300 Deschutes Way SW, Ste 208  
MC-CSC1  
Tumwater, WA 98501

Corporation Service Company  
(Registered Agent for Mindful  
Nourishment, LLC individually and dba  
Zing Bars)  
251 Little Falls Drive  
Wilmington, DE 19808

On March 11, 2021, 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

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

March 11, 2021

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On March 11, 2021, 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

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

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

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

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

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

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

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

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

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

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

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

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

March 11, 2021

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Alethea Sargent, Assistant District Attorney  
White Collar Division  
San Francisco District Attorney's Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
alethea.sargent@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

On March 11, 2021, 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 March 11, 2021, 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, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

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, Orange  
County  
300 N Flower St  
Santa Ana, CA 92703

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

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA 92415

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

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

District Attorney, Sierra  
County  
100 Courthouse Square, 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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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).

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***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).

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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.